

Indices, benchmarks, and indicators: planning and evaluating human rights dialogues

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Study

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Preface

In September 2001, the Swiss Government accepted a postulate by the Commission for Foreign Policy of the Federal Parliament. The postulate asked the government to develop the instrument of human rights dialogues within the human rights foreign policy. In 2004, the Federal Department of Foreign Affairs (DFA) issued an internal briefing paper for this policy. To further develop the instrument, the Human Rights Policy Section of the DFA asked the German Institute for Human Rights in early 2005 to elaborate a study on this comparably recent instrument of foreign policy with special attention to measurement of impact.

A commitment to the universal validity of human rights does not lead to a predetermined, uniform pattern of bilateral human rights policy towards all countries. A different approach is possible and necessary: Depending on the context of the respective country, the implementation of human rights concerns requires a set of instruments that follows different goals and strategies and sets different thematic priorities. In my opinion, this applies for human rights dialogues as well.

The present study elaborates the instrument of the institutionalized or formalized human rights dialogue. It focuses on the measurement of impact of human rights dialogues, an area that has not yet received sufficient attention. For states conducting human rights dialogues the study contains valuable recommendations for the planning, design, implementation and evaluation of future dialogues.

I thank the authors, Anna Würth and Frauke Lisa Seidensticker, for the study. It is to be hoped that future dialogues may find ideas here for their planning.

Berne, November 2005

Wolfgang Amadeus Brühlhart
Head of the Human Rights Policy Section
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Contents

Summary	8		
Introduction	10		
1 Impact of Human Rights Norms	12		
1.1 Reasons for Ratification of Human Rights Conventions	12		
1.2 Impact of Human Rights Norms	13		
2 Planning Human Rights Dialogues	16		
2.1 Situation Analysis	16		
2.2 Setting Goals	17		
2.3 Strategy Development and Coordination ..	17		
2.4 Activities and Results	19		
3 Measuring Impact: Forms and Methods	21		
3.1 Forms of Impact Assessment	21		
3.2 Methods of Measuring Impact	22		
3.2.1 The Debate on the Quantitative Description of Human Rights Performance	22		
3.2.2 Indices, Indicators and Benchmarks: Definitions, Scope, and Their Potential Uses	22		
3.3 Mechanisms for Gathering Data: Strengths and Weaknesses	24		
4 The Practice of Impact Assessment	27		
4.1 Dialogue Model: Changes on the Normative Level	27		
4.1.1 Impact Assessment Based on Indices	27		
4.1.2 Impact Assessment Based on Qualitative Benchmarks	28		
4.2 Dialogue Model: Changes in Human Rights Policies	28		
4.2.1 Impact Assessment Based on Benchmarks	29		
4.2.2 Impact Assessment Based on Indicators ..	30		
4.3 Dialogue Model: Improving the Human Rights Situation ..	31		
4.3.1 Measuring the Reduction in Human Rights Violations	31		
4.3.1.1 Impact Assessment Based on Indices ...	31		
4.3.1.1.1 Freedom House Index	31		
4.3.1.1.2 Human Rights Indices	32		
4.3.1.2 Impact Assessment Based on Qualitative Benchmarks	33		
4.3.1.2.1 Qualitative Benchmarks in Annual Country Reports	33		
4.3.1.2.2 Qualitative Benchmarks in EU Human Rights Dialogues, Especially the EU Dialogue with Iran	34		
4.3.2 Monitoring the Human Rights Situation Multi-Dimensionally	36		
4.4 Conclusion: Impact Assessment for Human Rights Dialogues	38		
5 Recommendations	39		
Literature	42		

Summary

Bilateral Human Rights Dialogues are a recent instrument in governmental human rights policy. Often criticized as lacking transparency and results, human rights dialogues are increasingly subject to guidelines and evaluations and held in multilateral fora to offset negative effects of the bilateralization of human rights concerns. This study examines these recent attempts to increase the transparency and result-based orientation in governmental human rights dialogues.

In the first chapter, the study analyses political science literature on the statistical impact of treaty ratification and on qualitative change in a country's human rights record to support the thesis that partners in a human rights dialogue need to specify their goals precisely. In particular, it is argued that ratification of treaties as a goal should be distinguished from the goal of improvements in the overall human rights record.

The second chapter proposes goal-setting on clearly distinct levels: from ratification of human rights instruments up to solid institutional guarantees for human rights. Analysing the limited documentation publicly available, it is contended that planning for human rights dialogues needs to make use of up-to-date human rights methodology, that is, analyse the human rights record in terms of state obligations to respect, protect and fulfil human rights. Furthermore, planning for a dialogue should take up existing international material, in particular the Concluding Observations by United Nations treaty bodies and the recommendations of Special Rapporteurs. When setting goals for a dialogue, partners need to be aware of the different levels of goals, and how they relate in terms of impact. It is demonstrated that the relation between treaty ratification and implementation is mainly discursive, whereas specific policies, for example policies to increase access to justice, may have a more concrete and measurable impact on the human rights situation. In terms of strategy, the study stresses the importance of coordination among different bilateral actors wishing to start a human rights dialogue.

Partners may have different motives for starting a human rights dialogue. It is contended that this does not necessarily constitute a major problem as long as motives and goals are of an equivalent order and transparent, and partners adjust topics and themes accordingly. In general, partners should concentrate on a few topics of common interest where they can share substantive respective experiences and views, rather than touching upon all human rights issues in the most general fashion. Partners should avoid privileging political over social rights and vice-versa – a human rights dialogue should always respect that human rights are indivisible, and that effective human rights protection poses major challenges for all countries. Lastly, it is suggested that human rights dialogues adapt methods of gender-sensitive project planning known from technical cooperation, by devising clear goals, activities and the results. Without differentiation between activities and results human rights dialogues and, more generally, support for human rights, can not be monitored for impact.

Chapters three and four discuss measurement of impact of human rights support and particularly human rights dialogues. Chapter three expounds the theoretical foundations, chapter four practical applications. A first section introduces terminology: Impact monitoring is understood as one of the instruments for project steering, based on a regular assessment of the results of specified activities. Evaluation is defined in a narrow technical sense, constituting the major instrument to assess the impact of an intervention and the effectiveness of the instruments used.

It is argued that so far human rights dialogues have been subject to neither impact monitoring nor evaluations in this sense. Rather, ex-post assessments were conducted which analyse the situation before and after a human rights dialogue without assessing the effectiveness of the dialogue. A second section deals with the different methods of quantitative and qualitative measurement – indices, indicators, and different forms of benchmarking – and their respective strengths and weaknesses.

Chapter four devises three possible models of human rights dialogues. Each model is defined by its goal: dialogues which aim to change the normative environment in the partner state, for example by support for ratification and enshrining treaty provisions in the national constitution or legislation; dialogues pursuing change in specific human rights related policies, for example conditions in prisons or pre-trial detention, and lastly, dialogues conducted with the intention to contribute to improvement of the overall governmental human rights record. These dialogues will include objectives on the level of legislation and policies but will also strive to reduce the number and severity of violations. Each model is then examined as to how to measure progress and impact of the dialogue, whether by using indices, indicators or different forms of benchmarks. It is argued that changes in legislation can best be monitored by qualitative benchmarks if those are pegged to a specific time frame. Human rights sensitive policy changes necessitate qualitative and quantitative measurement. This can best be achieved by combining performance benchmarks and indicators.

Using the example of the EU-Iran-dialogue, the study demonstrates that dialogues aiming at improving the

overall human rights record are usually assessed by analysing the number and severity of human rights violations. It is argued that this one-dimensional perspective is insufficient and does not do justice to the complexity of any human rights situation. Rather, changes in the human rights record should be conceived as a process of multiple dimensions – law, policies, and results thereof – and be measured accordingly, by using a combination of benchmarking and indicators. Overall, the study recommends that goals for human rights dialogues should be long-term, realistic and transparent; planning should stress coordination and be savvy, both in terms of human rights and planning methodologies. In respect to impact monitoring, the study conceives impact monitoring and evaluations for human rights dialogues as necessary, but cautions that monitoring – be it by quantitative or qualitative indicators or benchmarking – constitutes only a preliminary line of questioning into very complex political processes. The study also points to the necessity to collect data, with a particular view to gender, ethnicity/region and social status. It recommends that partners in a human rights dialogue should collect disaggregate data in a sustainable fashion and utilize available data to the maximum extent possible.

Introduction

Human rights dialogues are a relatively recent instrument of national human rights policy. First used in the late 1980s, they have been employed with increasing frequency since the mid and late 1990s. While such dialogues had originally been conceived as bilateral instruments, there are now more and more efforts to coordinate the dialogues as, for example, within the Berne process for human rights dialogues with China (since 2001) and the Brussels-Berne process for human rights dialogues with Iran (since 2003).

Institutionalized or formalized human rights dialogues are publicly announced proceedings used by countries to initiate political talks about human rights.¹ The beginning and the end of such talks are clearly defined, with both sides being represented by regional as well as technical experts. From time to time, the public in the participating countries is informed about the agenda and the progress of the dialogues. Other conceptual issues, such as which aspects of human rights are to receive most attention, depend on the situation in the respective countries. They are agreed on by the participating countries, which often expect different, occasionally even contradictory, things from the dialogues. Usually, dialogues consist of political talks, meetings of experts, and workshops. As a more recent develop-

ment, many dialogues now also include various components of Technical Cooperation. Which of these elements are used above all, and how they are combined, depends on the goals of the dialogue and on the degree of partnership that exists between the two countries. The European Union (EU) is engaged in such formalized dialogues only with China (intermittently since 1996) as well as with Iran (2002–2004).

Formalized human rights dialogues must be distinguished from other kinds of dialogues. For example, interfaith or intercultural dialogues are often conducted by non-governmental organizations. Talks about the human rights situation as part of bilateral political relations or as part of treaties such as EU agreements of association² are likewise different from human rights dialogues.³ Yet another way to address human rights issues consists of interventions on behalf of victims of human rights violations in the partner country, often by various diplomatic steps. The latter are unilateral and confidential responses to specific occurrences.

Even the finest rhetoric of partnership cannot reduce political or economic inequality between countries conducting a human rights dialogue to a minor detail.⁴ The possibility of having a true dialogue, however,

¹ The EU uses the term "structured human rights dialogues" when referring to countries with which the EU has not concluded any treaties that contain a human rights clause: Council of the EU (2001), para 2. Switzerland calls such talks "specific dialogues" and defines them as being topic-oriented and "aiming at the establishment of bilateral relations characterized by continuity": Bundesrat (2000), 2592; a detailed discussion of this instrument from the Swiss point of view can be found in: DFA (2004), Medium-term concept 2004–2007, 6ff. Germany has never adopted its own definition of human rights dialogues. Instead, it refers to pertinent EU guidelines and activities: Auswärtiges Amt (2005), 282–284, 388–390, 419, 434, 448–455. Australia declares human rights dialogues to be the "most effective way to address the human rights situation in other countries". The reasons for making this assertion are not provided, however, and the instrument is not defined either: Department of Foreign Affairs and Trade (2004).

² The EU calls these instruments "agreement-based dialogues": Among other activities, this term covers dialogues with candidates for EU membership, relations under the treaty of Cotonou and the Barcelona process with Mediterranean countries: Council of the EU (2001), para 2.

³ Good working definitions of the various possibilities of addressing human rights in negotiations with partner countries can be found in: DFA (2004), 12–15. Thus, it is possible to engage in intensified bilateral human rights talks that are less formalized than dialogues. Political dialogues with a human rights element: As part of regular political consultations, an additional day could be scheduled to discuss certain human rights topics. Local human rights dialogues: Human rights talks can be held locally not only with representatives of the central government but also with regional administrative bodies.

⁴ Baaz cites rather eloquent examples that illustrate how the more recent discourse of partnership in development cooperation may hide paternalistic attitudes: Baaz (2005).

depends on the question of whether and how government representatives from both sides are willing to listen to each other, on the goals that the partners in this dialogue pursue, as well as on the clarity and transparency of these goals.

As a matter of principle, human rights dialogues should be studied with a view to their goals, and thus with a view to the degree of partnership achieved by the participants. Is the dialogue aimed at getting the respective partner to stop current human rights violations? If so, dialogue sessions can become rather antagonistic, with both partners accusing each other of human rights violations and demanding their prevention. Or is the dialogue intended to promote a certain human rights policy, with other countries providing assistance, particularly of an advisory nature? Such an objective has the potential of being realized in a true dialogue, because the participating countries have to plan and carry out the appropriate measures together. It is exactly this mix of communicative and result-oriented processes that determines the possibilities and chances of human rights dialogues. If a dialogue aims at normative improvements in the partner country, that is to say, the ratification of human rights conventions and their implementation in the form of constitutional guarantees and implementing laws, the partners must listen to each other very carefully, because it is precisely this kind of situation where the frank exchange on the doubts, priorities and experience of both sides can, among other things, determine the quality of a dialogue.

If the objectives of human rights dialogues are not stated openly as well as clearly defined, it is almost impossible to achieve partnership, or even to assess the impact of the dialogues, which is methodically difficult under any circumstances.

As the instrument of human rights dialogues has been used only for a relatively short period of time, there are as yet no publicly available systematic studies of the instrument and the methods for assessing its effectiveness. The lack of access to documents concerning bilateral human rights dialogues is a fundamental problem. Often, the only publicly available documents are press releases of little substance.⁵

During the late 1990s, the effectiveness of the dialogues with China and Iran was questioned by non-governmental organizations. According to critics, the human rights dialogue with China had turned into a substitute for resolutions and draft resolutions in the UN Commission on Human Rights. Like the German dialogue with Iran, it was also said to have been characterized by a lack of transparent planning and agenda setting, as well as by a lack of results, i.e. improvements in the human rights situation.⁶ Regional experts voiced similar criticisms, too.⁷

Possibly in response to these critical comments, the EU and various other countries have, since the start of 2000, increased their efforts to improve both the planning and the actual conduct of dialogues by coordinating them, by controlling them with the help of guidelines, as well as by assessing their success and impact. The latter of these efforts, which are rather technical in nature, are the subject of this study. Admittedly, impact measurement builds on assumptions and methods that suggest scientific precision where this is hardly attainable due to the inherent complexity of socio-political relationships and processes. Thus, the results of impact assessments can only be approximations of a complex reality, expressed in the form of initial questions rather than definitive answers. And yet, human rights dialogues and the promotion of human rights, just like all other interventions in complex political systems, need to be scrutinized with regard to the nature, reach, and quality of their impact in order to ensure transparency as well as capability to learn from mistakes.

This study begins with an introduction to the debates on the impact of human rights norms. It then looks at the planning principles for human rights dialogues. In the main part, various theoretical models for measuring the dialogues' impact are presented, which are then applied to human rights dialogues in practice. Above all, the study tries to determine the methods most suited for impact assessment, taking into account the different goals dialogues may pursue. It concludes with a number of recommendations.

⁵ The EU makes available some documents on its dialogues. Even so, essential parts of the documents remain confidential.

⁶ On the dialogue with China: Human Rights in China (1998); Deile (2000); Rights and Democracy (2001); Tibet Campaign / Human Rights in China / The International Campaign for Tibet (2003).

⁷ Hasenkamp (2004); Reissner (2000).

1

Impact of Human Rights Norms

Many human rights debates focus on questions concerning the enforcement of human rights, with many commentators actually speaking of an implementation crisis in this context. While this crisis has various causes, one factor is the way in which the bodies of the United Nations function. Another one is the unwillingness of countries to implement ratified conventions. The following sections will take a closer look at the last aspect by examining the motives that countries are guided by when they sign human rights conventions. Thus, in section 1.1 it will be argued that the ratification of conventions is an important goal of human rights dialogues. However, ratification does not always indicate a government's willingness to improve the human rights situation. Section 1.2 deals with how human rights norms work politically. How does change in a country's human rights situation come about, and which political, national and international processes are most likely to guarantee human rights permanently? Finally, these insights are applied to the formulation of the objectives of human rights dialogues and their planning.

1.1 Reasons for Ratification of Human Rights Conventions

Generally, the promotion of human rights operates on the assumption that the ratification of international

conventions entails the obligation to implement them and to submit reports on the implementation process. Often, however, the very ratification is already overshadowed by reservations. The attachment of substantive reservations usually means that the country in question has no intention of implementing essential provisions of the convention as national law. Thus, it should come as no great surprise that most reservations have been filed concerning the conventions on women's and children's rights.

After ratification many countries comply with their obligation to submit reports not at all, very inadequately, or extremely late.⁸ With regard to legislative implementation, some countries maintain that they must first pass the necessary legislation, which then they do not do once the convention is ratified. Others prevent their judges from enforcing human rights conventions in court either by giving them insufficient training or by limiting their jurisdiction. As far as the implementation of human rights conventions is concerned, a quantitative study by Oona Hathaway, a law professor at Yale University, clearly shows that in many countries ratification does not lead to any statistically significant reduction in human rights violations even after lengthy periods of time.⁹ From this she infers that human rights policy should increase the capacity for monitoring and "reward" improvements in imple-

⁸ For a very detailed discussion see Bayefsky (2001), 193ff. In order to improve the effectiveness of the convention regime, as well as cooperation with it, detailed proposals for reforming the system of reports have been worked out over the last few years: United Nations, Secretary-General (2004).

⁹ A comparison of ratifying and non-ratifying countries produced the same results: Hathaway (2002), 1940, 1962ff. Hathaway explains her findings by saying that the ratification of human rights conventions has a double meaning, and that each ratifying country conveys both an instrumental-tactical and an expressive-discursive message. While the former means that conventions come with certain obligations, the discursive message conventions tells other members of the international community something about the image the ratifying country aspires to, for example its intention to belong to the international community. The instrumental-tactical and the discursive aspects of the ratification of human rights conventions have by now drifted further and further apart. According to Hathaway, the reason for this development is the fact that implementation is not monitored effectively. To the extent to which the international community rewards the discursive aspect of ratification (that is membership of the group of state parties) rather than the actual implementation of human rights conventions, the implementation crisis will persist.

Neumayer (2004) rejects the validity of Hathaway's results. But he too has to allow for certain limitations: "Treaties ... engage countries in a human rights process that is extremely difficult to demonstrate quantitatively." Neumayer (2004), 32. Keith (1999) reaches the same conclusions as Hathaway, although her analysis is not as thorough.

mentation systematically. In sum, the message *practice counts* should politically and practically be conveyed more forcefully.

What does this mean for the promotion of human rights and especially for human rights dialogues? Given the practice of countries described above, it is possible to infer that ratification does not necessarily indicate a country's willingness to comply with its obligations under the conventions and to improve the human rights situation. With regard to the objective of promoting human rights the appropriate conclusion seems to be that ratification must be seen as one goal and the implementation of the conventions as another goal. There can be improvements in the human rights situation without ratification of the conventions, while ratification does not necessarily affect the human rights situation. Nevertheless, ratification is an important reference tool for exerting political pressure in order to bring about the implementation of the treaty obligations.

This idea will be developed further in the following section. However, the perspective will shift to the political processes that allow for human rights norms to take effect.

1.2 Impact of Human Rights Norms

How do human rights norms work and what are the essential mechanisms responsible for their effectiveness? This question is mainly studied by those political scientists who focus on political and civil rights.¹⁰ Currently, there are two theoretical strands, the so-called realist school and the so-called constructivist school respectively. The main difference between these schools concerns the roles they assign to the factors power, self-interest, compulsion and discourse, as well as to various actors, above all, countries and (trans)national, civil-society actors.¹¹

The realist school argues that countries accept and implement norms only if they have to, that is, if they can be forced to do so. From the point of view of this school, the self-interest of countries also constitutes an essential and necessary motive for the implementation of norms. Thus, punitive measures, sanctions, and negative conditionality are seen as the most important tools in dealing with economically vulnerable countries. Above all, the central actors of human rights policy should therefore be countries that have enough economic and political power to exert the appropriate pressure. It follows that internationally or regionally less powerful countries cannot be important actors. Also, for countries that are not very vulnerable economically other instruments must be found. However, the realist school has, as yet, not come up with an answer to the question of how power might be tamed by power with regard to human rights.¹²

The constructivist school offers a different argument. They assign central roles to the factors discourse and persuasion, as well as to transnational actors and national processes. The study by Risse, Sikkink, and Ropp (1999) is particularly interesting. They set out what they call the "spiral model", which they use to explain changes in the human rights situation in a number of countries between 1985 and 1995. They attribute these changes, above all, to the work of the central actors in this model, namely the transnational human rights organizations. Empirical examples are based on analyses of the developments in the Philippines, Indonesia, Kenya, Uganda, Tunisia and Morocco, all of which are considered to be economically vulnerable countries and to be a player on regional rather than on global level.

The model of Risse, Sikkink, and Ropp has some analytical weaknesses.¹³ In the context of this study, however, it is of interest mainly because of its description of those social and political learning processes that

¹⁰ The way economic, social and cultural human rights norms work seems to enjoy rather less attention.

¹¹ The best overview of the various theories is provided by Hathaway (2002), 1942-1962.

¹² Another weakness of this approach is its one-sided fixation on state power. Norms are seen as implemented when states comply with them. The national level beyond state actors is not considered at all. A detailed critique of this view is provided by Cortell / Davis (2000). Moreover, self-interest, i.e. the central motive driving a state's activities, can only be determined ex post facto rather than substantively. Thus, it is also impossible to develop a strategy for human rights policy. In addition, the argument is circular: If a country stops violating human rights, doing so must have been in its self-interest. If, on the other hand, it does not change its behaviour, a change apparently cannot have been in its self-interest.

¹³ Above all else, it suffers from the same weakness as the realist model: If there are any changes in the human rights situation, they can be explained ex post facto by the strength of the transnational human rights network. If, on the other hand, there are no changes, this simply means that the transnational network was not strong enough. Since the exact nature of this strength or weakness remains unclear, it is impossible to know what might be done to develop or boost this kind of strength. As far as the development of strategies for human rights work is concerned, both the realist and constructivist school are marred by the fact that they use as their explanatory variable that which is to be explained substantively, see Schwarz (2002), 69. A comprehensive critique of the "spiral model" model can be found in Landolt (2004).

bring about and accompany changes in the respect for political and civil rights. The authors assume that authoritarian regimes become more liberal because the domestic opposition is strengthened by transnational relations. A change of policy, or even a change of government, occurs when domestic critics succeed in establishing human rights as the basis of social opposition. This process unfolds in five phases in a movement reminiscent of the shape of a spiral, hence the term "spiral model".

It must be emphasized once more that the model is based on an analysis of developments in economically vulnerable countries. In countries with different characteristics it is possible that governments do not move beyond certain phases, or even that the human rights situation worsens again.

Phase 1: Repression

During the first phase, the opposition is weak and very little information about human rights violations reaches the outside world. If transnational networks manage to put human rights violations on the international agenda (above all, by releasing reports of their own and by supporting resolutions in the Commission on Human Rights and the General Assembly of the United Nations), international public opinion will become more and more active and denounce human rights violations.

Phase 2: The Validity of Norms is Denied

Increasing moral pressure leads to phase two during which the government denies the universal validity of human rights norms. Without even addressing the charge of human rights violations, representatives of the respective governments denounce human rights norms as "Western". In addition, they accuse the human rights bodies of intergovernmental organizations of being agents of imperialism, colonialism, or westernization. As can be easily seen, this description fits the cultural relativism that is often used as an argument by the representatives of a few Asian and Islamic countries.¹⁴ In keeping with this rhetoric, the government uses this phase as an opportunity to increase domestic repression even more. This is confirmed by empirical evi-

dence which shows that the human rights situation can get worse, although public opinion has already been alerted. The important thing, however, is that the repressive government's rhetorical defence amounts to taking part in a process of communication that is hard to cut off again. In other words, even denying the validity of human rights norms is a form of dealing with them.

Phase 3: Tactical Concessions and Self-Entanglement

The phase of denying the validity of human rights norms is followed by a phase characterized by the government making tactical concessions and getting more and more entangled in its own arguments. Substantively, this phase is marked by the increasing cooperation of national and international human rights networks and their intensifying contacts with donors, international human rights institutions and the international community. These developments act as a constraint on the repressive regime's ability to choose its course of action. The intense external pressure in the form of threats and sanctions heightens the opposition's sense of being protected. It loses its fear of the repressive government and tries to influence the country's population more and more actively, which in turn increases the pressure within the political system.¹⁵ The government then makes some tactical concessions concerning the validity of human rights. Given the right circumstances, it may even set up its own human rights institutions. In the short term, this development serves to ease tensions. In the long term, however, it strengthens the opposition, which can now voice its criticism and its interests even more forcefully. Whereas in phase two the dynamics for change are set in motion by international public opinion, they now arise from within the centre of the countries violating human rights norms. In phase three, governments have two options: controlled liberalization or continued repression. The latter, however, merely leads to another round of strengthening the opposition and increasing the pressure exerted by even greater mobilization efforts on the part of transnational networks, which in the end also brings about controlled liberalization.

During this phase public discourse no longer focuses on the question of the validity of human rights norms as such but on the specific charge that human rights

¹⁴ Tomačevski (2000), 158ff. provides some eloquent examples of how representatives of the Iranian government used this line of argument in the Commission on Human Rights and the General Assembly of the United Nations in the 1980s; Amarsaikhan (2003), 10–48 cites examples taken from the discourse on Asian values. Cf. Würth (2003) on the question of whether and how culture-specific arguments can be employed in the context of the discourse on human rights.

¹⁵ Based on a quantitative and comparative analysis, Foweraker / Landman (1997) show that popular mobilization is the prerequisite for successful claims to citizenship rights.

norms are being violated. The conflict between the government and the opposition actually starts to turn into a kind of court trial, with both parties trying to win over international public opinion by using appropriate arguments. By conceding the validity of human rights norms for purely tactical reasons, the regime gets itself more and more entangled in a process from which it will not be able to disentangle itself in the long run. The government's own acknowledgement of the legitimacy of human rights can now be increasingly used by the population stipulating their implementation.

Phase 4: Status of recognition

The fourth phase of the "spiral model" describes the development to a continuous recognition of human rights norms ("prescriptive status") that can be used as a reference point. For this to happen, it is not enough for the government to sign on to human rights. Rather, it will also institutionalize and implement them as national law. The validity of human rights is confirmed by the government in as natural a way as possible and without taking into consideration the type and composition of the audience. In addition, the government will visibly make a long-term effort to actually comply with human rights conventions.

Phase 5: Norm consistent behaviour

Sustainable changes depend on continuous local and international mobilization even after the establishment of the norms' prescriptive status. Not least because of selective reporting by the media, international attention has often abated in the past, especially when a change of government had occurred. The prosecution of earlier human rights violations by the legal system in cooperation with the United Nations and the International Criminal Court helps to maintain the world's attention and to prevent the international community from losing interest in the country. Efforts to enhance the population's knowledge and awareness of human rights, especially by human rights education and the institutionalization of the rule of law, are of prime importance during this phase.

Discourse matters is thus the conclusion of the "spiral model". The discourse on human rights requires a certain degree of publicity while at the same time it helps generate such publicity. Human rights discourse entangles governments, with few options for long-term disentanglement. As far as the strategies and instruments of human rights policy are concerned, the following can be inferred from the "spiral model":

- The objectives that governments might consider trying to achieve in human rights dialogues also depend on the phase a potential dialogue partner is in at the time. In most cases, the potential partners for a human rights dialogue will be countries going through phases two, three or four. In order to identify the various phases correctly, it is necessary to observe the potential partner countries very closely and to develop a country- and phase-specific strategy.
- International pressure, for example from bodies of the United Nations, is a particularly important instrument in the first and second phases, even if it cannot always counteract human rights violations directly. But without international mobilization, it is impossible to strengthen a country's domestic opposition, which, according to the "spiral model", is the precondition for change.
- Instruments organized as dialogues, such as Technical Cooperation for the promotion of human rights or dialogues of governments, are in certain political situations the more appropriate and effective instrument than pressure by resolutions. But, as a matter of fact, the potential of the various instruments depends on the phase that the regime and the opposition are going through.

Discourse and practice matter – equally – this may be the short-hand summary of the preceding discussion about the impact of human rights norms. In the context of human rights dialogues – and criticism thereof – improvements in the normative environment should therefore not be played off against a reduction in human rights violations. Positive changes in both areas should be promoted and acknowledged.

2 Planning Human Rights Dialogues

In this chapter, the insights gained above are applied to the planning of human rights dialogues. Section 2.1 will introduce the basics of assessing the starting point for human rights dialogues, while section 2.2 deals with possible goals for human rights dialogues. Section 2.3 elaborates on strategies, and lastly, differentiated planning procedures will be discussed in section 2.4.

2.1 Situation Analysis

The starting point for a gender-sensitive human rights analysis consists of three aspects of a government's obligations: the obligation to respect, the obligation to protect, and the obligation to fulfil human rights.¹⁶ Based on this understanding, a government's obligations and the degree of their fulfilment can be outlined and the various duty-bearers and right-holders be identified. In addition, it should be examined whether governments meet their obligations in a non-discriminatory way – for example, when elementary education is legally required but actually not enforced for girls or refugees.

Besides using the three-pronged obligation as the basis of analysis, any appraisal of the human rights situation must also utilize international reference material, and if they exist, the Concluding Observations of the United Nations treaty bodies that monitor the

implementation of human rights conventions, as well as the recommendations of United Nations special rapporteurs on certain topics or countries.

For one thing, this follows from the necessity to assess a country's actual practice of implementation. For another, it is important to tie in with already existing discourses so as to exploit this as a strategic advantage. What is more, state reports to the treaty bodies and their Concluding Observations provide information for the general public that can be actively referred to by transnational and local non-governmental organizations.¹⁷ Not all Concluding Observations by treaty bodies are equally helpful. The credibility of human rights policy, however, suffers considerably if the substantive and country-specific work of United Nations bodies is ignored, while at the same time countries are exhorted to cooperate with these very bodies.¹⁸

In addition, there are numerous other sources that can be used for analyzing a country's human rights situation, such as country reports of human rights organizations or institutions, reports of international donors, and so on. A situation analysis should facilitate a deeper understanding of current problems that also takes into account an analysis of the causes of human rights abuses. The "spiral model" allows understanding such situations within their local context.

¹⁶ The three-pronged obligation supersedes the older notion that political and civil rights are characterized by omissions, whereas economic, social and cultural rights are characterized by positive provisions, goods or services; see Riedel (2004), 169–170.

¹⁷ A project of the University of Berne under the supervision of Walter Kälin is currently converting the Concluding Observations, as well as the recommendations of United Nations special rapporteurs and other UN sources, into a database. Once completed, this resource will greatly facilitate the work of all institutions involved in the promotion of human rights.

¹⁸ In the 1990s, human rights dialogues were largely characterized by giving little heed to the treaty bodies as well as to special rapporteurs. Even today this problem persists in Technical Cooperation programmes of many bilateral donors (see Woodman 2004), and even where one would least expect it, namely in the Technical Cooperation programmes of the Office of the United Nations High Commissioner for Human Rights. Here are the critical remarks of a 2003 evaluation report: "The relationship between OHCHR [Office of the High Commissioner for Human Rights] Technical Cooperation programmes and treaty bodies and special procedures seems to be a one-way street: emphasis on treaty body reporting and the role and relevance of the special procedures in Technical Cooperation activities, but no or hardly any attention to recommendations in the design and implementation of Technical Cooperation activities on relevant thematic issues or countries." Flinterman / Zwamborn (2003), 62.

2.2 Setting Goals

As a matter of principle, the goals of a dialogue must always be determined in negotiation with the partner country and agreed on by both sides. Goals can be set on different levels. These are not organized hierarchically. Instead, they run parallel to each other. Thus, goals on different levels can be combined with each other.

Figure 1 Levels for goals in human rights dialogues or human rights promotion

Level	Goals
Level 1	Ratifications, including consideration of reservations to treaties and acceptance of individual complaints mechanisms
Level 2	Legislation of human rights in national constitution and legislation
Level 3	Implementation of human rights treaties and national legislation by local institutions and policies
Level 4	Permanent guarantees for human rights: reduction of the number of violations; mandate and functioning of governmental and non-governmental human rights institutions/organisations; functioning of mechanisms for redress

This division of goals is based on several considerations:

- The attributability of effects: To establish a causal link between human rights dialogues and any visible change is notoriously hard. While potentially possible on level 1 and 2, it should be very difficult at level 4.
- Impact: Impact is much more likely at levels 1 and 2 than at levels 3 and 4. Given planning cycles of three to four years, it would seem rather unrealistic to expect an impact at all levels.
- Linking cause and effect: Many projects for the promotion of human rights start from the implicit or explicit assumption that impact at levels 1 and 2 will cause changes at levels 3 and 4 in the long run. As shown above (see section 1.1), this assumption cannot be confirmed empirically. What is more, human rights violations are always caused by the actions, or the failure to act, of persons, groups of persons or

institutions. For the time being, the ratification of treaties, or a corresponding legislative act, can at least improve the possibility to identify violations as such. Only in the long term there might be any preventive effects. Accordingly, the causes of human rights abuses cannot be removed by either the ratification of human rights conventions or the passage of legislative acts alone.

A linkage of cause and effect will probably exist between human rights policy and the permanent institutionalization and guarantee of human rights. Thus, it makes sense for human rights dialogues and concomitant Technical Cooperation activities to focus on changes in specific human rights policies, or in other words, to pursue goals at level 3.

Overall, this distinction between levels for goal setting is a plea for an approach to the planning of human rights dialogues (and Technical Cooperation activities) that is clear and transparent, and above all, modest and realistic.

2.3 Strategy Development and Coordination

The development of human rights strategies is based on the assessment of the human rights situation. It is indispensable both for human rights dialogues and for measures aimed at the promotion of human rights.¹⁹ It includes an appraisal of one's own position and the political context, as well as of the phase that the partner country is going through with regard to its approach to human rights norms. Moreover, it is necessary to evaluate the topics, actors and partners, as well as the successes and failures of previously used human rights instruments. Another necessary component of human rights strategies is the coordination with other bilateral and multilateral policies and actors. The following paragraphs will look at some of the numerous important strategic considerations.

The various actors involved in human rights dialogues must be assessed strategically. What are the motives and the expectations behind the partner country's decision to enter into a dialogue, and what are those of the various partner institutions participating in Technical Cooperation programmes? In this context, it is much less important for the partners' expectations to be identical. In certain political phases it is impossible

¹⁹ See Woodman (2004). She deplores the lack of such strategies in projects to promote the rule of law in China. Similar criticism has been voiced by the International Council for Human Rights Policy (2000).

to assume as much anyway. Rather, it is important for each partner to be able to have a clear sense of what the other partner's expectations are.

The second question concerns the degree of involvement of the various partners and actors in existing human rights abuses and human rights protection respectively. Workshops with academic experts contribute to the discourse if the results are diffused widely. By contrast, expert meetings with decision-makers from the justice sector are characterized by relative proximity to human rights violations and are therefore important, depending on the goals of the dialogue. At first, debates with this group may often amount to no more than deductivist assertions such that, for instance, cultural or religious prohibitions of torture are taken as proof that such a practice cannot exist in reality. But this is exactly why such groups must be approached continuously by offering them talks with working groups made up of functionally equivalent experts who are also well versed in the region's affairs.

The evaluation of the partners will also help choose the topics and instruments for the dialogue. Do relevant partners in a dialogue categorically deny the normative validity of human rights obligations, as described in phase two of the "spiral model"? If so, the offer of Technical Cooperation programmes for the promotion of human rights will not be of interest to a partner country. A dialogue on the current state of human rights would not seem to be a wise move either.

Instead, it appears to make more sense under such conditions of phase two to hold workshops on the theological and philosophical approaches to human rights norms in various traditions. In doing so, however, it is important not to let the proponents of cultural relativism establish a foothold in the debate by arguing that some traditions can be invoked as a legitimate argument to undermine the validity of human rights.

Or do the partner countries acknowledge the validity of human rights norms while denying certain violations of the norms?²⁰ In this case, it seems best to try for a very intensive dialogue about those areas the partner

is willing to talk about. The vocabulary used in such talks may be of a less provocative nature but still as precise as possible with regard to all relevant aspects of human rights. For example, it might be useful to bring up the concept of "human dignity" as a way to address the issue of women's rights.

The choice of topics for a dialogue must be by mutual agreement in any case. It must therefore be assumed that, from the point of view of both parties, the agenda will feature topics that are determined by priorities other than those of one's own side. They might include economic, social and cultural rights or the right to development.²¹ But they might also concern areas like racism, religious freedom, or the handling of asylum and migration, where, for example, many western countries have human rights problems. Here, it is essential to be as forthcoming in discussing one's own problems as one would expect the partners to be in discussing theirs, and especially so in such sensitive areas as women's rights. A constructive contribution in this sense is the description of the steps that have been and are being taken in order to remedy the shortcomings of one's own country. In doing so, one can also proactively refer to one's own experience with the treaty bodies or corresponding regional institutions for the protection of human rights.

Strategies must also take into consideration the usual instruments of human rights policy and use them in accordance with the assessment of the phases described above. If, for example, in phase two or three it is impossible to get civil society involved in the improvement of the human rights situation, promotion of national action plans and human rights institutions is not advisable because for both instruments to work it is necessary that representatives of civil society and government can get involved in a common process and, if possible, develop a common vision. In situations where the involvement of civil society is possible and relatively effective, but where the government's capabilities are limited, the promotion of national action plans or national human rights institutions does make sense, though.²² In the long run, these government-sponsored national human rights institutions can become important actors.

²⁰ Typical situations are those where the existence of political prisoners is denied or treated as taboo, while conditions in the regular prison system can be discussed. Similar situations may arise when countries are unwilling to reform substantive norms of their criminal law that indicate human rights violations (for example, the death penalty), even though they intend to reform their code of criminal procedure.

²¹ This seems to be a concern that many are rightly suspicious of in those cases where serious violations of civil and political rights can be observed in the partner country. But this suspicious mindset also reflects a Western understanding of human rights, which – despite all the lip service paid to the indivisibility of human rights – de facto focused solely on civil and political rights for a long time.

²² A good source on the work of National Human Rights Institutions: International Council for Human Rights Policy (2005).

Activities in connection with dialogues should be strategically coordinated with one's other programmes and activities, as well as with those of other countries.²³ To be sure, there are multilateral forums, such as the Commission on Human Rights or the General Assembly of the United Nations, where countries can exchange information about their dialogues. More interesting, though, are initiatives like the forums provided by the Berne and the Brussels-Berne process for at least communicating about their dialogues with China and Iran respectively. These forums should provide a basis for coordinating strategies and goals.²⁴ The coordination of objectives and activities is equally important in Technical Cooperation programmes for the promotion of human rights. A lack of coordination endangers the effectiveness of these projects and, what is more, it encourages the dialogue partner to play off one Technical Cooperation partner against the other.

To sum up, strategies are absolutely necessary for dialogues to be successful, and they are also the basis for a solid partnership between the two sides in a dialogue. Strategies comprise coordination, the assessment of one's own position, the partners, the possible topics and the windows of opportunity, as well as an analysis of the best way to pursue the goals of the dialogue.

2.4 Activities and Results

Human rights promotion and human rights dialogues intervene in political processes that are hard to grasp and often impossible to control. The high number of external factors makes it difficult to plan human rights interventions. Also, human rights dialogues come with a high risk of inertia and failure, in any case. In addition, there is the question of attributability, just as with interventions by means of Technical Cooperation,

because changes depend on the political will to make them, and the latter is always influenced by many factors. It is therefore far from easy to establish a causal link between a dialogue and any changes that might occur, or, in other words, it is hard to know if the changes are the result of the dialogue. They may, after all, have been caused by largely external factors (for example, lobbying by transnational networks or the threat of impending resolutions by the human rights bodies of the United Nations). Alternatively, they may be the effects of internal factors, such as upcoming elections and increasing economic or political vulnerability. It is therefore all the more important to use planning procedures that allow the various possible factors, as well as the risks, to be identified. At the same time, the goal and objectives of the dialogue must be determined, and the various activities as well as their expected results must be specified. This should be done in such a way as to make it possible to develop, already in the planning stage, appropriate methods for observing the dialogue's effects.

In this connection, the planning for human rights dialogues and Technical Cooperation activities for human rights may actually benefit from experience gained in development cooperation by adopting the appropriate planning procedures, above all the so-called project cycle management.²⁵ This procedure starts with a thorough analysis of the situation that is both sector-specific and gender-sensitive in order to identify possible objectives of an intervention and its underlying logic, as well as target groups and stakeholders.²⁶

At the core of operations planning with the help of project cycle management is the differentiation between activities and their results. Results are permanent outcomes for an intervention's immediate target groups (for example, the judiciary and prison staff), that is to

²³ The evaluation report on the Technical Cooperation of the Office of the High Commissioner for Human Rights concluded that the programme's activities were not sufficiently integrated with the other programmes of the United Nations: Flinterman / Zwamborn (2003), 88. Already since the mid-1990s, there have been reports of similar findings with regard to the coordination of various sponsors in the area of human rights and the integration of human rights promotion with developments in society at large: Heinz (1994), 51. See also International Council for Human Rights Policy (2000) and Woodman (2004) on the insufficient coordination of donors and the consequences thereof: excessive support for certain institutions, above all in urban centres, competition among donors for certain partners, donor-driven agendas of partner institutions.

²⁴ See DFA (2004), 22–23.

²⁵ For a detailed discussion of this approach see: EuropeAid (2001); on its usefulness for human rights promotion: SIDA (2000), viii, xi; Andreassen / Sano (2004), 9, 10. For an opposing view see: Sørbo / Tostensen (2005), 41, 53. They deny the applicability of this planning approach by arguing that it ignores the logic and dynamics of the political processes involved in the promotion of human rights and democracy, and that it produces linear assumptions about cause and effect. The authors do not, however, offer a convincing alternative.

²⁶ On the requirements for a human rights situation analysis, see section 2.1 above.

say, they are qualitative results of activities and not the activities themselves.²⁷ By contrast, an overriding goal describes a change that will benefit the whole population, or at least a representative part of it ("improvements in the situation of male and female prisoners").

Figure 2 Activities and results for training interventions

Goal	Improvement of prisoners' situation		
		Possible Indicators	Possible Data
Result	Application and relevance of acquired knowledge and techniques	x % of trainees apply the acquired knowledge/techniques in their daily work routines; x % of trainees are promoted in x number of years	Post-training survey
Activities	Training for prison wards and administrators	Number of trainees; ethnic (and/or social, gender, generational) composition of trainees; position of trainees	Pre- and Post-training survey

Without such a distinction between activities, results, and goals, all the planning will amount to no more than developing and mechanically carrying out activities ("completed so and so many dialogue sessions"; "published expert reports"; "provided so and so much further education for judges"). It will not become clear, however, what kind of results these activities are supposed to produce, nor how they are connected to the achievement of the overall goal.²⁸ Furthermore, it would be difficult to monitor the dialogue for quality. As will be explained in the following chapter, it is not possible to assess the impact or to evaluate the dialogue without differentiating between activities and results.

²⁷ For human rights promotion in the context of Technical Cooperation, some authors propose different or additional distinctions to be made between outputs and purposes. "Purpose" refers to the immediate benefits of an activity for the target group, while "output" refers to goods and services delivered by the project. SIDA (2000), 13; EuropeAid (no year), 115; OECD (2002), 4. This differentiation appears not to have been widely adopted in the literature on human rights: Andreassen / Sano (2004), 14; Kapoor (1996), 5.

²⁸ This is the main criticism that human rights dialogues, as well as projects for the promotion of human rights, are faced with again and again: SIDA (2000), xi. A similar view is also clearly expressed by the authors of an evaluation report on the Technical Cooperation programme of the Office of the High Commissioner for Human Rights: "An overview of the evaluations of the projects makes clear that they are focused on the activities carried out much less than on effects or results." Flinterman/ Zwamborn (2003), 39-40.

3

Measuring Impact: Forms and Methods

This chapter will focus on different forms of measuring the impact of human rights dialogues. Impact assessment is an essential precondition for transparency and credibility, but also for the partners' ability to learn. In section 3.1 the terms for the various procedures of measuring impact will be defined. Section 3.2 introduces the different methods of measurement. The discussion takes up experiences from development cooperation, in so far as they can be fruitfully applied to human rights dialogues and human rights promotion.

3.1 Forms of Impact Assessment

As a technical term, impact assessment is a generic term that covers two procedures, impact monitoring and evaluation.

Monitoring

Impact monitoring is one of the instruments for controlling projects and programmes. It builds on planning procedures that allow activities and results to be monitored and managed during implementation. Usually, impact monitoring relies on qualitative and quantitative indicators (for the terminology, see section 3.2.2).

Evaluation

Among other things, evaluation consists of analyzing both the achievement of the goals and the sustained nature of a project's effects. Evaluation implies a double look. First, the comparison of "before" and "after", and second, the comparison of what happens "with intervention" and what happens "without intervention". Starting from the planning documents, an evaluation

is based on the results of periodic monitoring of the achievement of indicators and benchmarks. An evaluation then assesses the effectiveness of the chosen instrument in relation to the achieved results. In other words, evaluations assume the observation of effects during an intervention. Overall, evaluations are very complex and expensive.²⁹

Ex post Observations

Ex post observations of a human rights situation must be distinguished from these two technical forms of impact assessment. Such observations are comparably inexpensive, since they aim at assessing changes with regard to the original situation. Sometimes changes in the situation are attributed to the intervention though, i.e. the human rights dialogue, without examining whether it was the intervention that brought about the result. This, of course, is not correct as the fact that the ex post observation takes place after a human rights dialogue does not prove a causal relationship.

To sum up, impact monitoring is one of the instruments for managing and assessing interventions. Like evaluations, it primarily looks at changes in the human rights situation as well as the effectiveness of interventions and the instruments employed. An ex post observation, on the other hand, examines changes in the situation but does not relate them to the effectiveness of the instruments.

The following section will continue the theoretical discussion on impact assessment at the level of methods and units of measurement. The section starts with a short introduction on the debate concerning the measurement of human rights performance.

²⁹ SIDA (2000), 17, earmarks 10 per cent of a project's budget for evaluation.

3.2 Methods of Measuring Impact

3.2.1 The Debate on the Quantitative Description of Human Rights Performance

So far, the reflections on measuring the impact of human rights dialogues have some shortcomings. They have not sufficiently taken into account that impact assessment in the sense of impact monitoring and evaluation requires a quantitative description of human rights performance. There are several ways this shortcoming can be overcome. One approach is to use international indices. Such indices compare countries with respect to their legal provisions intended to protect human rights and with respect to actual violations of these norms. Although this approach has been well researched, it is in fact rather controversial. Mostly, such indices are developed and used by political scientists. By correlating their data with variables like economic development, system of government, and political culture, these scholars try to demonstrate what boosts the ratification and implementation of human rights conventions on the one hand, or the occurrence of human rights violations on the other.³⁰ In development cooperation, such indices are used politically, in order to measure the performance of governments and to allocate funds accordingly. As a matter of principle, human rights experts view these indices rather critically. Such indices have not yet been used for measuring the effectiveness of human rights dialogues.³¹

Independently of the controversy around indices, another discussion relates to the use of indicators and benchmarking in human rights work and scholarship. Even though both debates deal with the quantitative description of human rights performance, their goals

and objectives are different. As used by the treaty bodies, benchmarks and indicators are intended to facilitate monitoring of human rights treaties compliance and the cooperation with ratifying states.³² In the context of development cooperation their purpose is to monitor and evaluate the impact of human rights promotion.³³

All in all, no consensus has as yet emerged concerning the question whether and how human rights performance can be described by quantitative methods.³⁴ But at least everybody agrees that basic conceptual work is necessary before such a quantitative description of human rights performance can be attempted.³⁵ Accordingly, there is no generally accepted set of human rights indicators or benchmarks that might be applied to human rights dialogues. Most of the indicators used in connection with human rights promotion have been developed in programmes designed to promote the rule of law or good governance. Frequently, however, they are insufficiently disaggregated by gender and region.³⁶

3.2.2 Indices, Indicators and Benchmarks: Definitions, Scope, and Their Potential Uses

"There is currently considerable confusion over the purpose, methodology, terminology and typology of indicators".³⁷ This is how a 2002 study by the Organisation for Economic Cooperation and Development starts. Today, this statement still holds true. Criteria, benchmarks, and indicators are often used colloquially, and then as synonyms rather than as technical terms.³⁸ In the following paragraphs, these terms will therefore be briefly defined, while their scope and potential uses will be illustrated.

³⁰ The most pertinent contributions were made by Barsh (1993); Carey / Poe (2004); Foweraker / Landman (1997); Goldstein (1992); Hathaway (2002); Keith (1999); Poe / Keith / Tate (1999); Poe / Tate (1994).

³¹ See Tomačevski (1989), 50-53 and United Nations, General Assembly (1993), para 148.

³² Scheinin (2005); Report of Turku Expert Meeting on Human Rights Indicators (2005), 7-9.

³³ As donors increasingly adopt rights-based approaches in development, they will have to give more thought to the question of how these approaches can be operationalized, and how their successes can be monitored.

³⁴ See the debate in the 1990s: United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities (1990); United Nations, General Assembly (1993).

³⁵ Malhotra / Fasel (2005), 24; in the same vein, Landman (2005) and Thede (2001).

³⁶ A good overview can be found in Vera Institute for Justice (2003); see also: Kapoor (1996), 23-29. For gender-related data, see: <http://devdata.worldbank.org/genderstats/> and <http://ddp-ext.worldbank.org/ext/MDG/gdmis.do>.

³⁷ OECD (2002), 3. A summary of the United Nations debates and documents from the 1990s can be found in United Nations, Secretary-General (1999), para 16.

³⁸ Kirby, for example, speaks of indicators, but then goes on to describe benchmarks. Green, on the other hand, carefully distinguishes between these terms (2001), 1080: "In brief, *benchmarks* can be defined as goals or targets that are specific to the individual circumstances of each country. As opposed to human rights indicators, which measure human rights observation or enjoyment in absolute terms, human rights *benchmarks* measure *performance* relative to individually defined standards" (italics in the original).

Indices

Indices are highly aggregated composites of various statistical data. They are expressed as scales, numerical values or qualitative terms. The best-known indices are the Freedom House Index and the Human Development Index. Both are used by academics and development practitioners.

Qualitative Benchmarks

Qualitative benchmarks are concrete, normative standards or criteria that the current situation is compared to. "Minorities' access to the law" or "equal opportunity for women in the job market" are examples of such benchmarks. Often they are used in the form of yes-or-no checklists, for instance, when the ratification of human rights conventions or their implementation in constitutions and legislation must be documented. Primarily, qualitative benchmarks are currently used for documenting human rights violations (see section 4.3.1.2 below).

Performance Benchmarks

Qualitative benchmarks must be distinguished from what could be called quantitative benchmarks, but in the literature is referred to as performance benchmarks. These latter set a target pegged to a deadline, for example, "the reduction of illiteracy rates of rural women between 15 and 24 years of age by so and so many percentage points by 2008", or "release of 50 political prisoners by the end of 2005". Performance benchmarks are thus concrete targets that have been specified at an institutional, regional, national or international level. Performance benchmarks are mainly used in connection with reforms of administrative agencies and institutions.³⁹ Currently, the most prominent examples of performance benchmarks are the Millennium Development Goals.⁴⁰ This type of benchmarking depends on qualitative information about current policies and their results. For the examples mentioned above, this means that there must be reliable and up-to-date statistics on illiterate women from various

age groups and regions, as well as data on the approximate total number of political prisoners. For monitoring the overall human rights situation, performance benchmarks can be used if they are linked to indicators. Thus, the prisoner benchmark can measure whether the agreed number of prisoners has indeed been released, while an indicator ("total number of political prisoners") will reveal whether new political prisoners were detained during the same time.

Performance benchmarks are very useful for monitoring human rights dialogues or Technical Cooperation activities that aim to improve specific policies in human rights relevant sectors or the services of certain institutions. If complex objectives are to be monitored by performance benchmarks they must be linked to indicators.

Indicators, Especially Human Rights Indicators

Here, indicators shall refer to those measurement units that can be used to determine the extent of changes directly or indirectly as well as multi-dimensionally, or in other words, with regard to their absolute occurrence, quality and scope.

In social science literature, indicators are required to be, among other things, specific, relevant and sensitive enough to register even short-term changes. There are three different kinds of indicators: quantitative, qualitative, and participatory. Quantitative indicators are derived from data collected by statistical methods. Qualitative indicators are based on survey results, such as questionnaires (see section 3.3 on data collection).⁴¹ Participatory indicators are those measurement units, whether quantitative or qualitative, that have been jointly developed with target groups, partners or stakeholders.⁴²

A number of proposals have been made on how best to conceptualize indicators designed specifically for human rights purposes.⁴³ A few authors have tried to use the three-pronged state obligation to respect, to protect and to fulfil human rights. Accordingly, they

³⁹ See Audit Commission (2000); Audit Commission (2000a); see also UNDP (2000), 99 for examples of the use of benchmarks in development cooperation.

⁴⁰ For the indicators gathered in connection with this benchmarking process, as well as their application to human rights, see United Nations, Secretary-General (2004), Annex 5 and United Nations, Economic and Social Council (2003).

⁴¹ See Kapoor (1996), 7–9; International Council for Human Rights Policy (2005), 26–27.

⁴² For a detailed discussion of the advantages and disadvantages of the various kinds of indicators in the work of national human rights institutions, see International Council for Human Rights policy (2005), 26–29.

⁴³ Overviews of these proposals are provided by Malhotra / Fasel (2005); report of Turku Expert Meeting on Human Rights Indicators (2005); Landman / Häusermann (2003). So far, however, no one has come up with a comprehensive and well-tested set of such indicators.

have suggested indicators for the respect of human rights norms (e.g. number of cases of ill treatment in detention), for the protection of human rights (e.g. effective protection for the victims of domestic violence), as well as for the fulfilment of human rights (e.g. school enrolment rates, etc.).⁴⁴ Others group indicators into those for human rights-related results (occurrence of violations, extent of guarantees) and those for human rights-related processes. The latter are to measure how the government lives up to its obligation to comply with the norms and to fulfil the various rights, for example, with regard to non-discrimination and the possibilities of redress.⁴⁵ Such indicators would therefore measure the support for vulnerable groups in various policy areas, as well as the establishment of agencies or mechanisms for filing complaints, and the scope of their remit.

In principle, solidly developed indicators can be used to describe and measure changes in the human rights situation, as well as in the policies pursued in those sectors that are relevant for human rights. Indicators can be used as the only basis for monitoring or in combination with other measurement units. All in all, indicators may be used for monitoring and managing complex human rights dialogues, and evaluating their impact.

Common Characteristics of Performance Benchmarks and Indicators

Performance benchmarks and indicators share many characteristics. They can be used for measuring the achievement of project objectives, results, and activities. It is therefore necessary to develop them during the planning stage of a dialogue, as well as to continuously adjust them during the actual conduct of the dialogue.⁴⁶ Furthermore, their formulation requires data that reflect the actual state of affairs. Accordingly, the sustainable gathering of data by institutions in the partner country should be one of the objectives of the dialogue or the Technical Cooperation programme. An appropriate period of time must be scheduled for this purpose, and adequate funding must be provided for in the budget. One last common characteristic is shared by all units of measurements used in impact assess-

ments. Projects and institutions must not overextend themselves by trying to meet too many benchmarks or indicators, or by choosing unrealistically ambitious ones. They should measure only things that are relevant, achievable, and measurable at justifiable cost in time, money and effort. Otherwise, the attention of everybody involved will shift from substantive goals and results to their measurability.⁴⁷

3.3 Mechanisms for Gathering Data: Strengths and Weaknesses

Sources and methods of data collection are central to all debates on the quantitative description of human rights-related performance. However, data collection is also essential for monitoring the impact of human rights dialogues and for evaluating them, as well as for human rights promotion since any measurement of change requires base line data. As a matter of principle, gathering this type of data is a responsibility of the partner country. As such, data collection should be a separate and independent objective of any human rights dialogue.

The common mechanisms for collecting data consist of:

- survey results of various types, primarily aimed at qualitatively assessing the human rights situation (representative surveys of opinions or perceptions, household surveys, entry or exit polls for clients of institutions);
- data on human rights violations that are derived from the observation of national events (events-based monitoring), for example, the country reports by human rights organizations like amnesty international and Human Rights Watch;
- data on the human rights situation and on human rights abuses that are based on assessing the situation with a view to certain standards or criteria (standard-based monitoring), such as those stipulated by treaties, agreements, certain guidelines, or conference resolutions of the United Nations;

⁴⁴ For example, Malhotra / Fasel (2005a).

⁴⁵ For example, the proposal by Green (2001) and Landman (2004) and (2005).

⁴⁶ "[I]n some senses, the search for appropriate ... indicators is itself an indicator of deficiencies at the planning stages of the project." This is how a group of evaluation experts sums up this fact: SIDA (2000), 114. Kapoor (1996), 5 argues that indicators can be useful instruments only if they are developed during the planning phase.

⁴⁷ On this point, there is general agreement in the literature: Vera Institute (2003), 4, 13; Kapoor (1996), 13; Audit Commission (2000), 8.

- national or international socio-economic statistics, preferably disaggregated according to criteria such as gender etc.⁴⁸

Many institutions insist on using quantitative data as a basis for impact assessment.⁴⁹ However, with regard to human rights work, this seems to be overly ambitious, given the limited availability of data and the general difficulty to quantify human rights performance. At the same time, it also seems to underestimate the relevance of qualitative data. Instead of attempting such categorical evaluations, the following paragraphs will therefore present a brief description of the strengths, weaknesses, and costs of the various mechanisms.

Up-to-date and reliable socio-economic statistics, such as those that form the basis for the Human Development Index, are not available for many countries. And even the ones that do exist are often insufficiently disaggregated by gender, age, region, etc.⁵⁰ On the one hand, this makes it difficult to use these kinds of data for human rights work. On the other hand, there is no use in waiting for the availability of tailor-made human rights statistics. Instead, data that can be used should be used.⁵¹ And what is more, this situation presents a great potential for the future, especially for the treaty bodies. By cooperating with the United Nations Statistics Division, the treaty bodies can help revise the requirements for the socio-economic data collected by countries in such a way as to facilitate their applicability to human rights issues.⁵²

Different challenges arise from the collection of data that are generated when national events are observed – for example, elections or the intervention of security

forces in demonstrations or civil wars. This kind of monitoring focuses on the systematic and most egregious human rights abuses. If, for instance, torture is used systematically in a civil war, simultaneous violations of economic rights by state and non-state actors may not be documented the same way.⁵³ This weakness can be partially overcome by combining events-based and standards-based monitoring. Thus, all events and developments that are relevant for human rights are always covered. This kind of comprehensive monitoring is indeed very demanding, but especially for international human rights organizations and national human rights institutions there simply is no alternative. Organizations should disclose the method of monitoring they use, while the reporting formats should be standardized as much as possible.⁵⁴

Surveys, on the other hand, mostly produce qualitative data. Surveys are very feasible in training programmes if the participants, as the immediate target group, can be interviewed directly (for example by means of entry or exit polls). Surveys can be very expensive, however, if, for instance, the evaluation of Technical Cooperation activities requires that indirect target groups, or in other words, a representative share of the population, need to be included in order to check whether the overall objective has been achieved.

In sum, it can be said that all mechanisms for gathering data on the situation and development of human rights have undeniable strengths with regard to their meaningfulness, but also certain weaknesses as far as their costs and practicability are concerned. In the development of indicators and benchmarks the following points must be taken into consideration: What is the basis of

⁴⁸ A good overview of the methods of human rights monitoring is provided by: Guzmán / Verstappen (2003), 25f.; on the collection of data: Landman / Häusermann (2003), 4; UNDP (2004), 6ff.; Malhotra / Fasel (2005), 5–22.

⁴⁹ See, for example, Malhotra / Fasel (2005), 7. Their main intention is to prevent subjective factors from influencing the evaluation of the data.

⁵⁰ See United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities (1990), para 8, 27–28; UNDP also concedes that the Human Development Index does not yield much information for human rights-related questions: UNDP (2000), 108.

⁵¹ This is expressed quite clearly by Malhotra / Fasel (2005), 25: "... in most cases, the possibility of using the available information on the socio-economic indicators ... at the international, national and sub-national level for use as human rights indicators has not been adequately explored." See also: United Nations, Secretary-General (2004), Annex 4 on the revised requirements for reporting to the treaty bodies.

⁵² See United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities (1990), para 10 for the situation at the beginning of the 1990s; for information on more recent efforts, see United Nations, Economic and Social Council (2003a); Report of Turku Expert Meeting on Human Rights Indicators (2005), 9; Malhotra / Fasel (2005), 10–18.

⁵³ The processing of such data also raises some methodological issues. Thus, the quantitative documentation of human rights violations requires a decision as to exactly which human rights-related aspects of an event are to be recorded – all of them or just the most serious one. If, for example, persons were tortured they are also likely to have been arrested illegally. In addition, numerous other rights have usually been violated as well. Should these abuses be recorded or just the peak of the event, in other words the torture? The portrayal of the human rights situation will look quite different, depending on the approach that is finally adopted. See Cingranelli / Richards (2004), 6; Poe / Keith / Tate (1999), 298.

⁵⁴ An important step in this direction was the development of standardized reporting formats for human rights violations by Human Rights Information and Documentation Systems (HURIDOCs).

the data? How can the partner country's institutions collect data that are current and reliable, and how can they do so in a sustainable manner? It should therefore be a central goal and topic of human rights dialogues to exchange views with partner countries concerning the collection of data on human rights-related facts, as well as to support these countries with regard to collection of relevant data.

4 The Practice of Impact Assessment

The focus of the following chapter will be various forms of impact assessment for human rights dialogues. The first part 4.1 introduces methods for impact assessment for dialogues where improvements in the normative environment of the partner country are envisaged. Section 4.2 takes a look at dialogues that are intended to change specific human rights policies. Section 4.3 finally deals with the possibilities of measuring the impact of those dialogues that aim at improving the overall human rights situation.

Three models, one for each of the three kinds of goal pursued in human rights dialogues, will be developed here. These models are not intended to be understood as evaluations of past or current dialogues.

4.1 Dialogue Model: Changes on the Normative Level

Human rights dialogues can try to improve a country's willingness to ratify human rights conventions or to implement them into national law. In such dialogues the first objective must usually be to convince the partner country's representatives of the relevance and universal validity of human rights. This requires precise knowledge of the country's legal and political reservations to the human rights system of the United Nations or the region. It is also important to understand those debates in the partner country that criticize the values and rights embodied in human rights treaties as culturally or religiously irrelevant or as threatening to national identity. Such a dialogue should therefore include, among other things, a detailed discussion of the two countries' various historical and political experiences with the recognition of human rights norms. It should also provide a forum where cultural, religious and political reservations regarding human rights norms can be voiced, discussed and dealt with. Depending on the political system, the target groups for such a dialogue

can be members of parliament as well as experts from academia and the legal profession, but also representatives of the justice and foreign ministries. At the same time, it is necessary to continuously include those forces critical of human rights, for example by means of joint working groups of experts holding functionally equivalent positions. Depending on the political situation in the country, cooperation with civil society groups may boost the domestic lobby for the ratification of conventions and their national implementation (see section 1.2 above).

What are the methods and units of measurement that the partners can utilize to assess the impact of dialogues with such a goal?

4.1.1 Impact Assessment Based on Indices

A number of studies by political scientists use indices in order to document the development of the international status of ratifications quantitatively, while others use them to measure the implementation of essential human rights in constitutional guarantees or legislative acts.⁵⁵ Above all, these indices are interesting for ex post analyses of dialogues. They can show the phases during which the partner country took steps towards implementation, but also how developments in the partner country compare to those in other countries.

An index on the normative situation in countries has been developed by Hans-Otto Sano and Lore Lindholt as part of their project called Human Rights Indicators at the Danish Human Rights Institute. They measure the normative environment (formal commitment) by aggregating four components:

- ratification of fundamental international and regional human rights instruments;
- ratification of other conventions of the United Nations;

⁵⁵ Landman (2004), 912, 914, 915 and Foweraker / Landman (1997) have done the most extensive research in this respect.

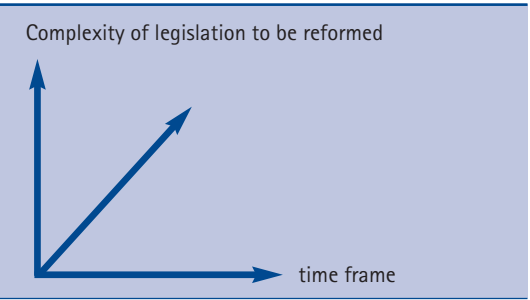
- reservations to conventions of the United Nations or the region;
- existence of a national Bill of Rights.⁵⁶

They depict this normative environment on a scale from zero (strong formal commitment) to eight (no formal commitment), and analyse their results with respect to regions. As a result, only East and South East Asia, as well as South Asia, show an intermediate commitment, while all other regions show a strong commitment. This index can be used for ex ante and ex post analyses of the normative environment. However, because of the (as yet) short time span it covers, it is not particularly meaningful. For measuring impact in the technical sense, other methods, especially benchmarks, are more widely used and more appropriate. They will be described in the following sections.

4.1.2 Impact Assessment Based on Qualitative Benchmarks

The partners can use qualitative benchmarks as a checklist in order to see if the country's constitution and laws guarantee certain rights stipulated by the conventions. Basically, this is similar to the way in which most countries write their reports to the treaty bodies. The respective articles of the conventions are juxtaposed with the corresponding laws or regulations of the country. Whether in this form, or in the form of qualitative benchmarks, these methods document the current status at a certain point in time. With qualitative benchmarks, the partners can therefore examine the legal situation ex post facto and can determine whether any changes occurred after the dialogue. To monitor these changes, though, qualitative benchmarks must be given a dynamic dimension by placing them within a time frame.

Figure 3 Qualitative benchmarks pegged to time frame and complexity of task



Drastically simplified, such a timetable might look like this:

Figure 4 Improving the normative environment: using qualitative benchmarks as results

Time Frame	Benchmark
12-24 months	Access to material and relevant actors is granted; base line studies are completed
24 months	First draft based on international standard is presented
36 months	Time table to pass the law is completed
48 months	Legislation is passed

The advantage of arranging qualitative benchmarks in this way is obvious: The partners can formulate them relatively clearly and keep them manageable. The arrangement of benchmarks within a time frame permits partners to focus on the results of their activities. The partners get a chance to control the success of the dialogue and to exit if certain benchmarks are not met by the date agreed. Measuring impact by following this model is comparatively simple: it measures whether legislative initiatives that may have been taken are compatible with international standards in purely normative terms. It does not, however, measure the results of the application of these laws which would be much more complicated.

To sum up: Dynamic qualitative benchmarks permit partners to monitor changes at the normative level reasonably well and comparatively inexpensively.

4.2 Dialogue Model: Changes in Human Rights Policies

Dialogues can try to bring about changes in human rights specific policies. Such dialogues require that the partners treat each other in a very cooperative way and that they have at least similar expectations of the dialogue. According to this model then, the partners will choose specific topics, such as the prevention of torture, relations with civil society, or abolishing the death penalty. In connection with these topics, they will dis-

56 Sano / Lindholt (2002), 5. The choice of the individual components of the index raises the question why and how "fundamental" conventions are distinguished from "other" UN conventions. Another problem is the insufficient distinction between procedural and substantive reservations. Also, it remains unclear why the acceptance of mechanisms for filing individual complaints is not part of the index.

cuss certain policies, for example, the issue of how to deal with complaints about torture and abuse, the relations between government and non-governmental organizations (NGOs), or the review processes with respect to death sentences. With this approach, the normative environment will, of course, also be taken into account. Primarily, however, the focus will be on institutions that apply existing laws and regulations. The common objective of changing policies makes it necessary to involve target groups that implement and execute the respective policies. With regard to the prevention of torture, these target groups include security forces, police, experts on forensic medicine, and prosecutors. In addition, they include groups of persons affected by these policies, such as victims' or survivors' associations, and human rights NGOs.

Such dialogues do not focus on culture-specific arguments on human rights or their derivation and validity. Instead, they are characterized by workshop-like, long-term, and specialist debates on the current situation and its ramifications, as well as by activities for capacity building. Furthermore, it is important that the dialogue activities are not restricted to urban centres. The sustainable gathering of data by partner institutions must be an independent goal of such dialogues. The following section examines methods for impact assessment of this model of human rights dialogues.

4.2.1 Impact Assessment Based on Benchmarks

Qualitative benchmarks can be used to check whether a certain human rights-related policy has been adopted, for example, whether a national human rights institution has been established and given an appropriate mandate.⁵⁷ Qualitative benchmarks are, however, hardly suitable for observing how well, or how poorly, the institution functions with regard to its mandate. But measuring changes in human rights policies implies both: the question of the existence as well as the performance of certain policies.⁵⁸ Because the latter is a dynamic process, it is better captured by performance benchmarks and indicators.

Figure 5 Using performance benchmarks to improve the situation of prisoners

Goal	Improvement of the situation of male and female prisoners
Target groups	Ministries for the Interior and Justice; judiciary; prosecutors; prison administrations, at central and regional levels
Activities	Political dialogue; expert meetings and workshops; technical cooperation, with components in training and information management.
Results	Access to and quality of water, sanitation, nutrition, health care are improved; Pre-trial detainees and convicts are separated; Overcrowding is reduced; Access to complaint mechanisms is improved.
Performance benchmarks	X % of male and female prisoners have access to specified benefits until the end of 2005; X + 1 % of male and female prisoners have access to specified benefits until the end of 2006; Reduction of prison-related infectious diseases by x % at the end of 2005 etc. In x % of all well-founded complaints submitted by prisoners, those responsible were held accountable by the end of 2005 etc.

Performance benchmarks are specific targets that have been agreed on at the institutional, regional, national, or international level. They are designed for the respective policies and the bodies in charge of them. Similar to indicators, they can measure performance levels by measuring the quantitative and qualitative differences between the target stipulated and the actual state of affairs. Figure 5 above illustrates the use of performance benchmarks. In order to measure the degree to which the overall goal has been achieved ("improving the situation of prisoners"), these targets can also be linked to indicators. Possible indicators might be the following:

⁵⁷ See International Council for Human Rights Policy (2005), 8: "*Benchmarks* are standards that define the minimum attributes of national institutions with respect to their legal foundation, membership, mandate, funding and so on. National institutions should meet such benchmarks because, if well-defined, they will determine whether or not the institution is in a position to achieve its fundamental purpose which is to promote and protect human rights *effectively*, as well as more specific programme objectives." (Italics in the original).

⁵⁸ This is not to suggest that human rights policies can, or should, not be measured with regard to other criteria, such as their efficiency.

- total number of prisoners relative to a) prison staff, and b) prison cells that conform to international standards;
- share of the funds allocated for prisons earmarked for equipping them according to international standards;
- access to meaningful information about the filing of complaints;
- the time it takes from the filing of a complaint to a decision concerning this complaint.⁵⁹

Thus, changes in policies and services of certain institutions can be measured quite well with the help of performance benchmarks, whether with or without additional indicators.

The advantage of performance benchmarks is their specificity, which makes disagreements about their interpretation less likely. This is very different in the case of qualitative objectives or quantitative indicators. For example, the objective "improving the capacity of government agencies to deal with human rights complaints" or an indicator like "number of complaints about human rights violations" leave ample room for partners to have very different notions of what the objective implies or the indicator means. Performance benchmarks thus have a specificity and clarity that make them particularly suitable for impact assessment and evaluation in connection with this dialogue model.

4.2.2 Impact Assessment Based on Indicators

Policy changes can also be identified with the help of solidly constructed indicators, because they can capture absolute events, as well as the quality and scope of changes. The essential prerequisite for the development and the use of such indicators is, as in the case of performance benchmarks, the availability of data on the actual state of affairs.

Figure 6 illustrates how multi-dimensional quantitative indicators can be used for measuring the achievement of the objective "boosting the role of the supreme court in the review of death sentences".

Figure 6 Strengthening the supreme court in reviewing death sentences: possible indicators

Dimension	Operationalisation	Possible Indicators
Result in terms of absolute number	Number in a specific period of time	Number of death sentences examined by the Supreme Court
Result on specific levels	Number on a specific level / period of time / particular region / with a view to a particular community	Number of death sentences passed between year x and year z reviewed by the Supreme Court; number of death sentences passed against members of certain communities (or: passed for certain crimes) which were reviewed by the Supreme Court
Result in terms of scope	Percentage	Percentage of all primary court sentences (per year) handing down the death sentence; percentage of all Supreme Court rulings confirming the death penalty

Such multi-dimensional indicators make it possible for the partners to control the implementation of a comparatively manageable, human rights-related policy over a planning horizon of several years.

In choosing a particular model of impact assessment, that is, in deciding whether primarily to use performance benchmarks or indicators, the partners will also take into consideration the policy area in question. Thus, independent institutions like the judiciary and national human rights institutions cannot simply be told what their results are to be ("the supreme court reverses a certain percentage of all rulings by courts of first instance"; "the national human rights institution brings a certain percentage of complaints to court"). Here, indicators seem to be much more appropriate. But for institutions bound by orders and instructions, such as prison administrations and police stations, the partners

⁵⁹ Adapted from: Vera Institute for Justice (2003), 55–58.

can indeed agree on specific targets to be checked against performance benchmarks, as the examples have shown.

To sum up: Dialogues that aim at changing specific policies have clear and manageable objectives. Their impact is comparatively easy to observe. Sustainable data collection by the partner is a necessary part of such dialogues. However, it is not an end in itself but a prerequisite for transparency and accountability, and as such an essential contribution to changing the respective policy.

4.3 Dialogue Model: Improving the Human Rights Situation

Many human rights dialogues and programmes for the promotion of human rights intend to improve the human rights situation on the ground. This is a very complex goal because the partners want to bring about changes in all areas of human rights protection. They must try to put an end to human rights violations (and if necessary to investigate and prosecute perpetrators), as well as to create the conditions for a sustainable institutionalization of human rights. Raising public awareness of human rights can also be an objective. Strategies, target groups, and instruments for such dialogues must therefore be accordingly complex. The capabilities of civil society must be enhanced, just like those of human rights-related agencies in cities and rural areas. Mechanisms for lodging complaints must be set up or strengthened, human rights education must be institutionalized, and finally, human rights violations must be reduced in both number and degree. With the objectives being so complex, impact assessment must meet very tough requirements. The following sections will discuss two possibilities. Section 4.3.1 explains how impact of such a dialogue can be measured by examining the reduction in human rights abuses. Section 4.3.2 looks at ways of measuring the impact of such dialogues multi-dimensionally. In other words, how can changes in the number of human rights violations, as well as changes in policies that aim to institutionalize human rights, be documented?

To summarize the findings before-hand: The comparison of both methods shows that the multi-dimensional

approach to monitor changes in the human rights situation is more appropriate than a form of impact assessment that just measures the number of human rights violations.

4.3.1 Measuring the Reduction in Human Rights Violations

As perceived by the public, improvements in the human rights situation correlate with a reduction in the number and gravity of human rights abuses. Human rights dialogues aiming at improving the overall human rights situation have to face these expectations and must therefore try particularly hard to employ transparent forms of impact assessment, as well as to pursue appropriate communication strategies.

There are several methods for measuring human rights violations. Currently, the most frequently used methods are indices and qualitative benchmarks. They will be described in the following sections. First, however, it should be mentioned that both methods are above all suitable for an ex post analysis of the human rights situation. But they cannot be used for monitoring the impact of a human rights dialogue and for evaluating it in the technical sense defined above.

4.3.1.1 Impact Assessment Based on Indices

4.3.1.1.1 Freedom House Index

The Freedom House Index is probably the best-known index in political science. It is based on standards or qualitative benchmarks respectively. Experts evaluate the global situation of certain civil and participatory rights by analyzing media reports. Freedom House then converts these assessments into a numerical scale and divides them into the categories political rights and civil liberties.⁶⁰ Next, the average of the values of these two categories is used to classify the country as "free", "partially free", and "not free". For some countries, the index covers the period from 1973 to 2004, a time span long enough to be relevant.

In spite of the harsh criticism levelled at the index,⁶¹ it is still being used by scholars⁶² and development prac-

⁶⁰ For a detailed description of this method see Freedom House (2003).

⁶¹ UNDP (2000), 91. Goldstein's criticism is particularly scathing (1992), 48: "... the basis for assigning of scores seems to be entirely impressionistic; ... the scales are obscure, confusing, and inconsistent and change from year to year."

⁶² In addition to other sources, Keith (1999) uses the Freedom House Index for her analysis of the impact of human rights conventions.

titioners. Thus, the U.S. Agency for International Development (USAID) uses the Freedom House Index to measure the achievement of the objectives of USAID activities intended to enhance the rule of law and the respect for human rights.⁶³

Yet how sensitive is the index to changes? The classification as "not free" has not changed over the past twenty years for 43 per cent of the 161 countries, for which the Freedom House Index provides data for the period from 1983 to 2003. For 25 per cent of these countries the index does not show any change in any year. At the other end of the scale, 23.6 per cent of the countries have consistently been classified as "free". This means that the index documents any fluctuations between "not free", "partially free" and "free" for only 33 per cent of the countries.⁶⁴ Given this lack of sensitivity of the Freedom House Index, it would seem quite problematic to use a country's rank in the index as a solid basis for monitoring the achievement of activities aimed at promoting human rights, as it has been suggested by USAID.

4.3.1.1.2 Human Rights Indices

The Danish Human Rights Institute has developed an index that is explicitly oriented towards human rights. It is especially designed to manage and monitor the institute's projects in development cooperation. Four separate indices are used to measure the government's commitment to civil and political rights, to economic, social and cultural rights, as well as to women's rights.⁶⁵

In addition, the formal commitment of countries is measured and grouped by region (see section 4.1.1 above).

Sano and Lindholt develop the index for the commitment to civil and political rights on the basis of human rights violations as counted in the country reports released annually by human rights organizations (amnesty international, Human Rights Watch) and the U.S. Department of State. However, they only draw on data for the late 1990s. As yet, the index therefore does not cover a sufficiently long time span.

The CIRI Index, a database maintained by political scientists David Cingranelli and David Richards, is based on almost exactly the same data. This database covers 195 countries for the period from 1981 to 2003. Like the index of Sano and Lindholt, it uses the human rights violations recorded in the annual reports by the U.S. Department of State and amnesty international and then aggregates these data in separate indices.⁶⁶ Two of these indices are the Index for Physical Integrity Rights and the Index for Empowerment Rights shown below in Figure 7.⁶⁷ Both indices run on numerical scales from zero (no respect for these rights) to eight and ten respectively (no violations of these rights).

The database is a working tool for political scientists. Like the index developed by Sano and Lindholt, however, it is also intended as an instrument for monitoring the impact of human rights policy (as well as of other policies) on the number of human rights abuses.⁶⁸ Figure 7 samples data from the index:

⁶³ USAID (1998), 14. USAID develops its own indicators only for subordinate objectives, such as improving the normative environment and setting up mechanisms for lodging complaints.

⁶⁴ Percentage calculations based on: Freedom House (2004). The calculations include only those countries, for which continuous data are available for the period from 1984 to 2003 (n=161). The various ranks "free", "partially free", and "not free" were assigned numerical values.

⁶⁵ The basic problem with this index is the different nature of the things that Sano and Lindholt measure. In the case of civil and political rights they measure violations of the norms, in the case of economic, social, and cultural rights they measure compliance with the norms, and in the case of women's rights they measure the degree to which women are discriminated against: Sano / Lindholt (2002), 5.

⁶⁶ The coding rules are very transparent, see Cingranelli / Richards (2004).

⁶⁷ Physical integrity rights: violations of the right to protection from extralegal execution, forced disappearances, torture and imprisonment for political reasons. Empowerment rights: violations of the right to free movement, free speech, political participation, freedom of religion, as well as of workers' rights. Unlike other indices, the CIRI database also includes comprehensive data on violations of women's rights.

⁶⁸ In the words of the authors: "It is designed for use by scholars and students who seek to test theories about the causes and consequences of human rights violations, as well as policy makers and analysts who seek to estimate the human rights effects of a wide variety of institutional changes and public policies including democratization, economic aid, military aid, structural adjustment, and humanitarian intervention." Cingranelli / Richards (2004a).

Figure 7 Physical Integrity Rights and Empowerment Rights Indices, 1983–2003

Both indices show considerable movement. Respect for empowerment rights, that is, among other things, the right to political participation, has been stagnant at the lowest level since 1988. By contrast, respect for physical integrity rights has visibly moved between intermediate values and the lowest level. Since 2000, it has been falling steadily though.

As opposed to the Freedom House Index, the two indices by Cingranelli and Richards appear to be constructed in such a way as to make them relatively sensitive even to short and medium-term changes. If, by the way, the picture presented in Figure 7 were to represent an assessment of the success of human rights policy towards a specific country, there would be cause for alarm concerning the effectiveness of the instruments employed.

To sum up, indices may be used to capture human rights violations, and to that effect they can, in the colloquial sense of the word, be used as indicators for the success of human rights dialogues. The main caveat concerns the data the indices themselves are based on, as mentioned above. Furthermore, the resulting picture will be rather sobering. A more serious limitation of impact assessment by indices, however, is the fact that,

like every ex post analysis, it does not answer the question of how to improve policy or human rights dialogues respectively.

4.3.1.2 Impact Assessment Based on Qualitative Benchmarks

Most often, qualitative benchmarks are used for measuring human rights violations, for example in the context of human rights impact assessments.⁶⁹ They are better known, however, in connection with the work of amnesty international and Human Rights Watch. The method also appears to be employed as a model for the evaluation of the EU dialogues. On the basis of these examples, the following sections will show how qualitative benchmarks are applied to the documentation of human rights violations.

4.3.1.2.1 Qualitative Benchmarks in Annual Country Reports

The country reports by amnesty international and other institutions that release annual reports use qualitative benchmarks, that is to say, certain standards

⁶⁹ The only available handbook to date was published by the Norwegian Agency for Development Cooperation: NORAD (2001). It is intended to help the agency's staff to check each project as to its contribution and its expected impact with regard to human rights. The following criteria are to be checked: equality/non-discrimination; the right to participate and to organize; the right to information; the right of the poor to procure a minimum income and food; and the opportunity to file complaints when rights are violated. The handbook can thus be seen as an attempt to prevent human rights violations by interventions of development cooperation or corporate investments. It is not intended to be used as a basis for the promotion of human rights though.

derived from, above all, civil and political rights. The most important events in a particular country are then reviewed in light of these standards. The continuous flow of information provided by regularly published country reports can thus be combined into a picture of developments and qualitative changes in the human rights situation.

Annual reports do not attempt to quantify the human rights situation, however. To be sure, numbers are used in the description of events, for example the number of people arrested at a demonstration. But the purpose of these numbers is simply to illustrate the seriousness of violations, not to quantify them in absolute numbers. This is how the American political scientist Claude and his colleague Jabine, a prominent statistician, summarize the character of these annual reports: "While the reliability ... is often reputed to be very high ... they do not provide systematic and comprehensive coverage of human rights violations. Each group operates under the constraints of its respective mandate and resources, leaving lacunae in geographic, topical, and temporal coverage."⁷⁰

As these reports emphasize selected events and qualitative changes, they are used for impact measuring only indirectly, namely in form of the indices mentioned above. USAID is alone in using the reports of the U.S. Department of State as a basis for assessing the human rights situation qualitatively, and, as mentioned earlier, the Freedom House Index for gauging the success of its programmes to promote democracy and the rule of law.

4.3.1.2.2 Qualitative Benchmarks in EU Human Rights Dialogues, Especially the EU Dialogue with Iran

The EU employs qualitative benchmarks for evaluating its human rights dialogues.⁷¹ Because of the limited access to EU documents, it is impossible to tell whether they are also used for monitoring dialogues.⁷² However, the EU uses the term benchmark rather inconsistently and, unlike this study, without distinguishing between qualitative benchmarks and performance benchmarks. As far as the units of measurement for assessing the success of the EU human rights dialogues are concerned, EU documents use both the term criteria and benchmarks. Their exact meaning, however, remains unclear.⁷³

Goals of EU Human Rights Dialogues

The goals of EU human rights dialogues are, by contrast, stated relatively clearly. The 2001 guidelines for human rights dialogues stipulate that such dialogues are to pursue various political objectives that are to be adjusted to the situation in the country concerned. The list of objectives comprises the following items:

- the discussion of issues that concern both sides;
- the intensification of the cooperation on human rights issues at the multilateral level, for example within the United Nations framework;
- the expression of the EU's concern over the human rights situation in the respective country;
- the attempt to collect information on the human rights situation and to improve the latter.⁷⁴

⁷⁰ Claude / Jabine (1992), 25-26. For similar criticism of events-based monitoring, see also Landman (2005), 22-23; Malhotra / Fasel (2005), 16-22.

⁷¹ On the terminology of EU human rights dialogues, see footnote 1, above.

⁷² See footnote 5, above. The available documents do not reveal either whether the impact of EU dialogues is assessed by any means other than interviews with the participants in the dialogue meetings.

⁷³ Here a short overview of the various formulations: "The European Union will also, on a case-by-case basis, establish criteria for measuring the progress achieved in relation to the *benchmarks* and also criteria for a possible exit strategy." Council of the EU (2001), para 6 (2) (italics in the original).

"It welcomes Iran's agreement, ... on the principle that both parties would enter into a dialogue with no pre-conditions, that all human rights issues could be discussed under the dialogue, that each party could choose to terminate the dialogue at any time, and that realistic and concrete benchmarks to evaluate progress would need to be established." Council of the EU (2002a), 10 para 2.

"The EU should establish a set of *benchmarks* to evaluate progress in a human rights dialogue and an exit strategy, if no progress is achieved within a reasonable period of time." ... "The European Union is committed to deal with the priority issues, which shall be included in the agenda for every dialogue meeting." Council of the EU (2002), para 3 (A), 4 (italics in the original).

⁷⁴ Council of the EU (2001), para 4.

According to the 2001 guidelines then, improvements in the human rights situation are only one of several possible goals. However, a more precise statement can be found in a communication on the implementation of this guideline, which was published by the Working Party on Human Rights (COHOM) at the end of 2004: Improvements in the human rights situation are considered a criterion for the continuation or discontinuation of a dialogue and therefore a direct goal of EU human rights dialogues.⁷⁵

Goals of the EU-Iran Human Rights Dialogue and Benchmarks for the Dialogue

With regard to the dialogue between the EU and Iran (2002–2004), improvements in the human rights situation had already been chosen as the goal relatively early.⁷⁶ Accordingly, the EU was thinking about benchmarks for the Iran dialogue as early as 2002. The EU Council came up with the following list:

- the signing, ratification, and implementation of international human rights instruments;
- cooperation with UN special rapporteurs as well as the working groups set up by the United Nations;

- improvements with regard to the death penalty and particularly cruel forms of punishment, such as stoning;
- improvements concerning the prevention and abolition of torture and other cruel, inhuman or degrading treatment or punishment;
- improvements with regard to discrimination;
- improvements in the penal system;
- the guarantee of openness, access, and transparency.⁷⁷

Because of the limited access to EU documents, it is impossible to discern whether these qualitative benchmarks were pegged to a time frame.⁷⁸

To be sure, the benchmarks formulated by the EU for the dialogue with Iran are, on the whole, very far-reaching, but precisely because of this they are very soft. They demand improvements in almost all areas of civil and political rights, and they do so, at least as far as one can tell, without laying down clear guidelines.⁷⁹ Almost every political system would need several decades for such developments. The benchmarks' lack of determinacy, however, also makes it very difficult for the partners to come to an understanding about the results of the dialogue, especially with regard to all issues that go beyond legislative measures.

⁷⁵ "Decisions [on engaging in structured human rights dialogues] ... will be taken case-by-case on the basis of the criteria of art 6.1 of the guidelines on human rights dialogues, extended on the basis of the experience gained in the process of evaluating the EU human rights dialogues with China and Iran: – major concerns on the part of the EU about the human rights situation on the ground in the country concerned, – genuine commitment on the part of the authorities of the country concerned with regard to a human rights dialogue with the EU and to improve the human rights situation on the ground, – a positive impact of a human rights dialogue on the human rights situation on the ground should reasonably be expected." Council of the EU, COHOM (2004), 5, para 4.

The same development can also be observed in the goals of Swiss human rights dialogues, albeit in the other direction. In 2000, for example, the Swiss Federal Council declared improvements in the human rights situation to be a criterion for the continuation of human rights dialogues, and therefore a goal: Bundesrat (2000), 2592. In the same spirit, a press release at the start of the Swiss-Iranian dialogue in 2003 stated that the two countries "had made a contribution to the improvement of the still difficult human rights situation in Iran": Confoederatio Helvetica (2003). With its Medium-Term Concept, the Swiss foreign ministry released a more precise statement to the effect that the goals of the dialogues included improvements in the normative environment, improvements in the two countries' mutual trust, the enhancement of implementation mechanisms, as well as the promotion of local human right groups: DFA (2004).

⁷⁶ See, for example, the terms of reference for the experts who participated in the first round of the dialogue in 2002: "The objective of an EU-Iran Human Rights Dialogue is to bring about concrete improvements in the human rights situation in Iran. The Iranian authorities will be asked to formulate their objectives." Council of the EU (2002), II, para 1. Elsewhere, the EU was quite explicit: "The Council stresses the importance it attaches to the opportunity presented by such a dialogue to bring about concrete improvements in the respect for human rights and fundamental freedoms in Iran." ... "The Council expects determined progress in the essential reform of the judicial system and with respect to the enforcement of the rule of law ..." "Recalling that the purpose of the dialogue is to achieve concrete progress on the ground, the Council agrees to assess the results of the dialogue on a regular basis.": Council of the EU (2002a), 10, 11.

⁷⁷ Ibid.

⁷⁸ Concrete targets have repeatedly been suggested to the EU by third parties, see: FIDH (2002); Human Rights Watch (2002). There is some question as to whether the EU has ever agreed on its benchmarks with its Iranian partner. Informed observers say that it never happened.

⁷⁹ With these benchmarks the EU undercuts its own guidelines on human rights dialogues, which emphasize the importance of setting realistic benchmarks, and with good reason. Unrealistic or hazy benchmarks are liable to jeopardize the credibility of the dialogue. Public opinion is justified in asking why dialogues are continued when there has not been any noticeable progress in terms of the benchmarks. Observers may conclude that human rights dialogues are not an appropriate instrument of policy. Dialogue partners may wonder why benchmarks are stipulated to begin with if they have no role in the further conduct of the dialogue as it is continued even if the benchmarks are not met. They might assume that benchmarking is a purely formal exercise.

Analyzing the Evaluation of the EU-Iran Dialogue

As shown above, the goals of the EU-Iran dialogue comprise improvements in the normative environment as well as a reduction in the number of violations. As far as can be inferred from the accessible documents and statements by participants, the EU measures the achievement of these goals by a combination of standards-based and events-based monitoring; and the evaluation of the EU Iran dialogue issued in October 2004 uses the qualitative benchmarks mentioned above. The events that occurred during the period under scrutiny are interpreted in terms of these benchmarks in order to conclude whether the country has moved forward or backward with regard to human rights.⁸⁰ This method is similar to the one employed by amnesty international in its annual reports (see section 4.3.1.2.1, above).⁸¹ And as far as the results are concerned, the EU evaluation is similar to the country reports of human rights organizations, too: There is a clear emphasis on the documentation of human rights abuses. Overall, this form of evaluation by qualitative benchmarks captures the actual state in various areas at a point in time chosen arbitrarily.⁸² But it remains unclear how violations, events, and policy changes are connected with each other.

This type of qualitative benchmarking is hardly suitable for monitoring dialogues and assessing their impact if the dialogues aim at comprehensive improvements in the human rights situation. Qualitative benchmarks of this type are therefore also problematic for evaluating dialogues, because this method does not allow to pose the question whether measures agreed on in the dialogue are in fact responsible for particular events. Yet, the logic of intervention, and thus the logic of assessment, are relevant for an evaluation in the technical sense that does not only focus on changes in the situ-

ation but also on the effectiveness of the instrument. In the final analysis, the course of action chosen by the EU is not the "evaluation of the dialogue with Iran" that it was billed as. Rather, it is a review of the human rights situation in certain areas of civil and political rights after two years of dialogue.

In sum: The reduction in human rights abuses can indeed be measured and documented with the help of indices and qualitative benchmarks. Both methods make ex post assessments possible. They do not, however, permit any monitoring of the results of the dialogue or its evaluation in the technical sense.

Jumping ahead by briefly summarizing the main thoughts of the following section: Even though observers of dialogues look particularly at the reduction or increase of human rights violations, changes in the human rights situation are a process with many dimensions, and need to be measured them accordingly.

4.3.2 Monitoring the Human Rights Situation Multi-Dimensionally

Changes in the human rights situation comprise change with respect to the occurrence of human rights abuses, change with respect to policies relevant to human rights, and change with respect to the normative environment. Such a comprehensive and multi-dimensional view of the human rights situation is what characterizes the work of the United Nations treaty bodies that watch over the enforcement of human rights conventions, as well as the work of special thematic and country rapporteurs. Accordingly, the treaty bodies, more than anyone else, have for quite some time been looking at ways of documenting changes in the human rights situation quantitatively as

⁸⁰ The evaluation is accessible under the document number CFSP/PRES/HAG/1160/04, albeit without the text on pages 3 to 34, which contains the assessment of the events during the period under scrutiny on which the evaluation hinges; see Council of the EU, Presidency (2004).

⁸¹ As a matter of fact, the Fédération Internationale des Droits de l'Homme (FIDH) released a similar assessment of the human rights situation in July 2004, shortly before the evaluation of the dialogue by the EU: FIDH (2004). Also in the summer of 2004, Human Rights Watch published a report on torture and prison conditions in Iran: Human Rights Watch (2004).

⁸² As a matter of principle, this is true of the annual country reports by human rights organizations, which are compiled and released at fixed times of the year. The EU-Iran dialogue was evaluated two years after the start of the first dialogue meeting. It just so happened that the evaluation took place during the first few months after the 2004 elections for the Iranian parliament, which had all along been expected to produce a conservative majority. In a certain way, the evaluation served the political purpose of allowing the EU to comment on the situation in Iran following the elections.

well as qualitatively. Institutions trying to operationalize rights-based approaches, as well as to assess their impact, have also studied this question intensively in recent years. Their thoughts and ideas can be utilized for complex human rights dialogues as well.

In a study for UNDP on impact assessment with the help of human rights indicators, for example, Maria Green recommends that they should be classified as result-oriented and process-oriented indicators. Result-oriented indicators are to be used for measuring the implementation of the government's human rights obligations. Process-oriented indicators, on the other hand, are to measure qualities of processes, i.e. whether they meet criteria such as rights to non-discrimination, accountability and participation.⁸³ Todd Landman of the human rights centre at Essex uses similar categories. He proposes that the human rights situation, as well as changes with regard to human rights, should be measured in terms of the normative environment (human rights in principle), in terms of the respect for human rights (human rights in practice), and in terms of policies intended to guarantee human rights (human rights

as outcomes of government policy). Rajeev Malhotra and Nicolas Fasel of the Office of the High Commissioner for Human Rights come up with similar categories in a study dealing with human rights indicators.⁸⁴

The normative advantage of these models lies in the relative proximity to the three-pronged state obligation, which is based on the idea that the obligations of governments consists of the obligation to respect, to protect, and to fulfil human rights.⁸⁵ The operational advantage lies in the fact that successes regarding the respect of human rights can be documented separately from successes regarding fulfilment, as well as from successes in the normative environment. This operational advantage, however, is also what makes impact assessments using this model quite expensive and very demanding with respect to the amount of data required. Figure 8 offers some examples:

Figure 8 Improving the human rights situation: impact monitoring based on human rights indicators and benchmarks

Indicators for the enjoyment of rights or Outcome-indicators	Indicators of conduct or process	Benchmarks/indicators of principle or structure
Number of allegations of violence against women	Number of allegations of violence against women examined by independent national institutions	Number of ratified human rights instruments relating to women's rights, e.g. CEDAW
Number of allegations of torture/extra-judicial executions	Number of allegations of torture/extra-judicial executions examined by independent national institutions; Number of allegations of torture/extra-judicial executions committed against members of certain communities (ethnic minorities, urban or rural poor).	Number of ratified human rights treaties (international, regional) Number and legal weight of reservations/declarations to the treaties Acceptance of individual complaint mechanism Cooperation with UN-special rapporteurs (permission for visits and follow-up etc.) Implementation of treaties in national constitution and legislation
Number of death sentences/executions;	Budget share for legal aid; number of death penalty cases where accused had access to legal aid.	
Average or minimum/maximum period of pre-trial detention	Length of pre-trial detention among different categories of detainees.	

⁸³ Green (2001).

⁸⁴ Landman (2005); Malhotra / Fasel (2005), 25-30; Malhotra / Fasel (2005a).

⁸⁵ As Malhotra / Fasel (2005), 29 clearly state, the indicators are not derived from the three-pronged model of state obligations.

If this model is operationalized it becomes clear that it contains human rights-related assumptions about a relationship of cause and effect between the relevant processes and results. The example in Figure 8, for instance, assumes that

- accountability will, in the long term, reduce the occurrence of violence against women and torture ("allegations of violence against women or torture are investigated by independent national institutions");
- free legal assistance in capital cases will lead to a declining number of death sentences;
- a decrease in the incidence of discrimination among various groups of prisoners will reduce the total length of time spent on remand.

These human rights specific assumptions about cause and effect are certainly not sufficient for controlling very complex dialogue activities and results. It is, for example, conceivable that the average length of pre-trial detention is reduced, while discrimination between groups of prisoners is not. Yet the model described above makes it quite easy to observe that there can be improvements in the human rights situation, even though human rights policies have not changed fundamentally. Conversely, it is also conceivable that policies affecting accountability change when, for example, a national human rights institution is established and given a comprehensive mandate that permits it to investigate individual cases effectively. It is nevertheless possible that human rights violations will increase, or at least that they will not decrease in the long term. The model also allows observers to determine whether this is the case.

On the whole, this indicator model, as proposed by Maria Green and, in slightly modified form by Landman, appears to be quite suitable for measuring the manifold processes affecting the development of the human rights situation. If solid indicators for activities and results are developed within the framework of this model, it will also be suitable for impact assessment, and thus for evaluating dialogues and the programmes of Technical Cooperation. It is hard to imagine that methods requiring less data can be devised for measuring the impact of dialogues aimed at improving the human rights situation.

4.4 Conclusion: Impact Assessment for Human Rights Dialogues

As far as measuring the effectiveness of human rights dialogues is concerned, it is important to employ terminology that is both clear and appropriately refined. Evaluation and impact monitoring are technical procedures intended, among other things, to analyze the effectiveness of dialogues in achieving their goals and objectives. In the case of ex post analyses the latter aspect does not apply, because such studies can only reveal changes relative to the original situation at the outset, whatever their cause may be.

Dialogue partners should consciously choose methods and units of measurement. In other words, they should decide, above all, whether to use indicators or benchmarking models, or a combination thereof, with a view to the dialogue's goals and objectives and the available data. As a matter of principle, the continuous collection of disaggregated data by the partner country's institutions is an important part of dialogues.

The analysis of three possible models of dialogues, each with a different kind of goal, finds that dialogue partners can utilize qualitative benchmarks quite well for measuring changes in the normative environment (dialogue model 1). For assessing changes in human rights policies, on the other hand, the partners should prefer quantitative units of measurement, that is benchmarking models, possibly in combination with indicators (dialogue model 2). And if the dialogue partners want to improve the overall human rights situation, they should measure the effects not only in terms of the reduction in human rights violations (dialogue model 3). Instead, in this kind of dialogue, they should also take into consideration the other essential dimensions of the human rights situation, such as changes in the normative environment as well as in the relevant policy areas. The best way to do this is to apply an indicator model adjusted for the purposes of human rights.

5 Recommendations

Human rights dialogues should be defined clearly, and they should be distinguished from other forms of human rights talks.

- Dialogues about the understanding of human rights, individual human rights topics, the human rights situation, or concrete individual cases can take various forms. There are, for example, academic exchange programmes, activities aiming to improve interfaith and intercultural communication, or projects designed to increase capacity at the level of civil society. The term human rights dialogue, however, should be used in a narrower sense. It is a well-planned, long-term instrument of government human rights policy aimed at the improvement of mutual understanding and the achievement of results. As such, it has been agreed on with a partner country (and possibly other countries also). Its planning, as well as its results, should be characterized by transparency with regard to the partner and the public at large. In addition, human rights and human rights obligations can also be addressed in political dialogues.

Human rights dialogues should always be seen and used in the context of other human rights instruments.

- Dialogue is one of several instruments of a government's policy towards human rights. In order to have a positive impact and, if at all possible, to achieve synergy, dialogues should always be seen and conducted within the framework of the various instruments of human rights policy. These instruments should interlock and complement each other. Playing human rights instruments off against each other weakens the system of human rights protection as a whole. The question is not whether pressure by resolutions in and by itself is "better" than dialogues or Technical Cooperation. Rather, it is which instruments effectively promote human rights at a given

point in time, or over a given period of time (i.e., in the short, medium, or long term). Each decision for a particular instrument should be justified and communicated in terms of these considerations, and each instrument must be scrutinized for its results.

The chances of human rights dialogues to have any effects depend on political factors.

- The chances of human rights dialogues to have an impact – as opposed to political pressure, for example – depend on the following questions. To what extent, if at all, have human rights norms already become part of the partner country's conception of itself as a state? Do the government and other institutions of the state deal with international human rights norms in a tactical and instrumental manner, or do they fundamentally affirm the validity of the norms as well as the need for dialogue and reforms? Can groups and organizations of civil society influence the domestic policy debate on human rights? The use of the various instruments of human rights policy, including human rights dialogues, must be consistent with developments in the domestic human rights debate in the partner country.

Human rights dialogues must make use of international reference material.

- At every step of the planning process, starting with the situation analysis, the human rights standards that are to be used as reference points should be formulated as clearly as possible. They must also be up to date with regard to the current state of the international system for the protection of human rights. In addition to the fundamental texts containing the norms themselves, such as human rights conventions at the universal or regional level, these reference standards also comprise the country-specific recommendations of the treaty bodies and the various

special rapporteurs of the United Nations as well as the General Comments developed by the treaty bodies.

- It must be emphasized that, according to the current state of the international debate on human rights, countries face three types of obligations. They must respect human rights norms, they must protect them from infringements by third parties, and they must provide an institutional framework to ensure that they can be effectively enjoyed in practice (obligation to fulfil). This understanding of the nature of state obligations is essential for determining the human rights situation and it should also be utilized for fine-tuning objectives in human rights dialogues and promotion.

The objectives of human rights dialogues should be realistic and clearly defined.

- As a matter of principle, the goal of dialogues should be clearly defined and disclosed to the public of one's own country as well as to the public of the partner country. Objectives should be defined in such a way that they can actually be achieved with the instrument of human rights dialogues. Thus, the participants should formulate operative targets.
- In developing the objectives of a dialogue, the partners should take into consideration how human rights goals are connected with each other. Policy measures adopted in human rights-related areas of policy, for example, are connected to the human rights situation by cause and effect, while the ratification of a convention is linked to its implementation by providing a frame of reference for public discourse and for national jurisdiction.
- At the same time, it is imperative to ensure that the various possible goals can be clearly distinguished from each other. Improvements in the normative environment in the partner country are an important goal of human rights dialogues. The implementation and enforcement of conventions, on the other hand, must be seen as a distinct and very relevant goal of dialogues.
- For dialogues that include a component of Technical Cooperation, it appears to make particular sense to try to change specific human rights-related policies. Policies designed to prevent torture or to guarantee women's access to the labour market, for example, offer more than enough subject matter for long-term dialogues. Such dialogues require the partners

to be cooperative and to have similar objectives and expectations concerning their collaboration.

- Questions of impact assessment should already be addressed when the goals and objectives are defined, as well as throughout the planning stage. In this connection, the continuous gathering of meaningful data on the human rights situation by the partners is an essential objective of human rights dialogues and human rights promotion. This is especially true in the case of objectives that transcend improvements in the normative environment and strive for changes in human rights policy, as well as in the actual human rights situation in the partner country.

Human rights dialogues should be planned transparently, and they should be coordinated with other actors as well. Appropriate methods must be chosen for this purpose.

- Human rights dialogues should be planned and carried out clearly and transparently. Accountability, as an essential principle of human rights policy in general, should also be a guiding principle of human rights dialogues and other measures of human rights promotion.
- The planning of dialogues and other actions or events to promote human rights should utilize procedures that make it possible to distinguish analytically between objectives, activities and results.
- Every dialogue needs a strategy as a reflection of one's own position and goals and of those of the partners.
- Human rights dialogues and Technical Cooperation should be coordinated with other countries and donors.
- The partners' expectations in dialogues do not necessarily have to be identical, but they certainly must be made quite clear. If the dialogue partner wants to discuss certain topics, while blocking others where serious violations can be discerned, one should begin by trying to identify a common set of possible topics acceptable to both sides.
- Especially Western dialogue partners, or countries in the northern hemisphere, should not reject topics that address their own demonstrable weaknesses with regard to the protection of human rights or human rights violations.



The objective of measuring the effects of human rights dialogues should be defined clearly and expressed in the most precise language possible.

- In order to ensure accountability and the capability to learn, human rights dialogues – like all other interventions in complex political systems – should be open to scrutiny with respect to the nature, scope and quality of their effects.
- Impact assessment cannot replace political analysis. Nevertheless, it is an essential prerequisite for guaranteeing the control of interventions as well as the transparent description of processes and results.
- Concerning the choice of the right method for measuring the impact of activities, it must be acknowledged that ex post analyses can indeed document changes in the situation in the partner country. However, they cannot relate such changes to any specific activities and thus the effectiveness of the instruments employed cannot be assessed. The latter is only possible with the more expensive methods of impact monitoring and evaluation.
- In the case of dialogues that initially aim at changing the normative environment qualitative benchmarks pegged to a time frame can be used to measure the achievement of their results and objectives.
- For dialogues trying to change human rights specific policies, performance benchmarks appear to be a particularly suitable method of impact assessment. Combining them with indicators makes it considerably easier to monitor the political environment.

When choosing the forms and methods of impact assessment, the partners should take into consideration the objectives of the dialogue and the data available.

- Choosing the forms and methods of measuring the impact of dialogues is one of the most important planning tasks. As such, it depends on the dialogues' goals and objectives.
- For a well-managed dialogue the methods of impact assessment should be chosen or developed together with the partner country. Should this be impossible, the partner must at least be informed about the (unilaterally used) methods.
- The continuous collection of disaggregated data by the partner is an essential component of complex human rights dialogues.
- Dialogues aiming at actual improvements in the human rights situation must apply complex forms and methods of impact monitoring. For one thing, one-dimensional forms of impact assessment, such as documenting the number of human rights violations, will often paint a rather sobering picture of the situation. For another, they fail to do justice to the complexity of the goal. Multi-dimensional approaches that can measure changes in the nor-

mative environment and in central policy areas, as well as the results of the various policies, are much more appropriate for dialogues with this goal.

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